

QUARTERLY REPORT
OF THE
ATTORNEY GENERAL

OF
ALABAMA

For the Period
April 1, 1945
Through June 30, 1945
Volume XXXIX

TO ALL STATE AND COUNTY OFFICERS OF ALABAMA:

In accordance with Code 1940, Title 55, Section 228, I am submitting to you the Quarterly Report of the Opinions of the Attorney General of Alabama. This Report covers all opinions rendered by the Attorney General from April 1, 1945, through June 30, 1945.

The Section of the Code referred to above requires that seven copies of this Quarterly Report be sent to each of the Probate Judges in the State, and the Probate Judge shall in turn deliver one volume each to the Clerk of the Circuit Court, the Sheriff, the Tax Collector, the Tax Assessor, the County Superintendent of Education, and Deputy or County Solicitor. Said Code Section also requires a copy of said Report be sent each Circuit Solicitor and the chief executive officer of each incorporated municipality in the State.

If you have any suggestions to make regarding the improvement of the service, we should be glad to receive it.

The office of the Attorney General is anxious to render prompt and efficient service to the State and county officials.

Very respectfully,

WILLIAM N. McQUEEN,
Acting Attorney General.

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OPINIONS

April 17, 1945.

Miss Sibyl Pool,

Secretary of State,

Montgomery, Alabama.

Code 1940, Tit. 10, §§ 95, 96—Corporations—Consolidation and Merger—

1. Corporations formed in the office of the Secretary of State under Code 1940, Tit. 10, §§ 95, 96, should not be reported by the judge of probate to the Secretary of State as in case of corporations formed in the office of a judge of probate, required to be reported under Title 10, § 11.

2. In such case the only charter fees required to be paid are those prescribed by Title 10, § 96.

3. Such corporations are not subject to any of the provisions of Art. 1, Tit. 10, Code of 1940.

Opinion by Assistant Attorney General Matthews.

Dear Madam:

Your request for an official opinion, bearing date of March 15, 1945, is as follows:

"Complying with the provisions of Sections 95-96, Title 10, Code of Alabama of 1940, corporations filed in the office of the Secretary of State merger and consolidation agreements after which a certificate is issued by the secretary of state as evidence of the existence of such new or consolidated corporation.

"Recently a consolidation was effected between Planters Gin Company and Cane Brake Gin Company continuing as Black Belt Gin Company. Shortly after that time a report of incorporation of Black Belt Gin Company was made to this office by the Judge of Probate of the county in which the companies originally organized, in pursuance of Section 11 of Title 10 of the Code, together with the \$2.50 filing fee.

"Will you please give us the benefit of your opinion as follows:

"1. Should a corporation, the result of a consolidation or merger under Sections 95-96, Title 10, Code of Alabama of 1940, be reported to this office in pursuance of Section 11 of Title 10 and should the filing fee be paid in pursuance of said section?

"2. Should the charter fees be paid in pursuance of Section 6 of Title 10 as if the corporation were a new organization and not merely as a result of a consolidation or merger?

"3. Should a corporation, the result of a consolidation or merger, be construed as an entirely new organization, following the same procedure

as all other new corporations, filing the articles of incorporation or certificate of incorporation and paying all the fees and complying with all the provisions of Article 1, Title 10, Code of Alabama of 1940."

Two or more existing corporations may, by compliance with Code 1940, Tit. 10, §§ 95, 96, merge or consolidate into a single corporation. The requisite procedure is to file in the office of the Secretary of State an agreement between the directors of the merging corporations duly certified as approved by their stockholders and setting forth certain particulars as to the new corporation thus formed for the purpose of merger or consolidation, whereupon, to quote the words of the statute, "a copy of said agreement of merger or consolidation duly certified by the Secretary of State shall be evidence of the existence of such new or consolidated corporation," and "upon the filing of said agreement in the office of the Secretary of State, the several corporations shall be one corporation by the name provided in said agreement."

Thus it appears that no further procedure need be taken to complete corporate existence of the new or consolidated corporation, by whatever name it may be called. The prescribed procedure is independent of that required for formation of a corporation by filing a certificate of incorporation in the office of the probate judge of a county in which the corporation is formed. Title 10, §§ 1-11.

There can be no objection, however, to putting on record in the office of the judge of probate of any county "a copy of said agreement of merger or consolidation duly certified by the Secretary of State," which is by statute declared to "evidence of the existence of such new or consolidated corporation." But there is no occasion or necessity for any report by the probate judge to the Secretary of State such as is required to be made under Section 11 of Title 10 with respect to corporations formed in the office of a probate judge, and I am inclined to believe that if such report is in fact made it should be returned by the Secretary of State to the probate judge as being unauthorized.

If notwithstanding the premises the incorporators of the "new or consolidated corporation," in addition to the procedure already taken in the office of the Secretary of State, also wish to form a corporation in the office of the probate judge by complying with the requirements of Title 10, §§ 1-11, there is nothing apparently to prevent them for doing so. But in such case, the prior proceedings in the office of the Secretary of State would be ignored and there must be a strict compliance with Article 1 of Title 10 and payment of all fees and charges therein fixed must be made to the probate judge before he would be authorized to record the certificate of incorporation. Title 10, § 4. And moreover the name of such corporation must not be "identical with that of any corporation already existing in this State, or so nearly similar thereto as to lead to confusion and uncertainty." Title 10, § 2(1).

For answer therefore to your numbered questions 1, 2 and 3, I am of opinion that each of said questions must be answered in the negative.

It remains to be said that the only fees and charges required to be paid by the new or consolidated corporation formed under Title 10, §§ 95, 96 are such as are required to be paid by Section 96, and no fees are payable with respect to recording the certified copy of such proceedings in any probate of-

fees except ordinary recording fees such as are paid for recording deeds, mortgages, and other written instruments.

I am returning herewith all papers relating to Black Belt Gin Company submitted for examination. No fees or charges are payable by said company, except as above indicated.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

April 19, 1945.

Hon. Van B. Gilbert,

Director of Public Safety,

Department of Public Safety,

Montgomery 2, Alabama.

Driver's License—Driving privilege of non-resident may be suspended or revoked as is a driver's license. Title 36, Sections 67 and 68, Code of 1940.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of April 11, 1945, is as follows:

"Section 68, Chapter 2, Article 1, Title 36, 1940 Code of Alabama provides among other things that the Director of Public Safety shall forthwith revoke the license of any driver upon receiving a record of such driver's conviction of driving a motor vehicle while intoxicated when such conviction has become final.

"Section 67, Chapter 2, Article 1, Title 36, 1940 Code of Alabama provides among other things that any non-resident who is at least sixteen years of age whose home state or country does not require the licensing of drivers may drive a motor vehicle in Alabama for a period of not more than ninety days in any calendar year if the motor vehicle so driven is duly registered in his home state or country of such non-resident.

"Where a non-resident whose home state or country does not require the licensing of drivers is convicted in the Alabama courts for driving a motor vehicle while intoxicated, please advise me if the term 'revoke the license of any driver' as used in Section 68 also means the driving privilege of a non-resident."

It is my opinion that your inquiry should be answered in the affirmative. By the express provisions of Title 36, Section 68, Code of Alabama 1940, it is stated, "The **privilege** of driving a motor vehicle on the highways of this state given to a non-resident hereunder shall be subject to suspension or revocation by the director of public safety in like manner and for like cause as a driver's **license** issued hereunder may be suspended or revoked."

You are, therefore, advised that the driving privilege of a non-resident exempt from procuring an Alabama driver's license may be revoked or suspended for the same causes and in the same manner that an Alabama driver's license is revoked or suspended.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

April 19, 1945.

Hon. E. B. Norton, Superintendent,

Department of Education,

Montgomery 4, Alabama.

Code 1940, Tit. 25, §§ 381, 388—Vocational Education—Counties—Canning Plants—

County governing bodies authorized to make such appropriations of county funds as are reasonably necessary to provide "canning plants" or buildings and equipment necessary for instruction, training, and education in the art of canning, in connection with appropriations by the federal government for vocational education.

Opinion by Assistant Attorney General Matthews.

Dear Sir:

Your request for an official opinion, bearing date of March 9, 1945, is as follows:

"The State Board of Education in cooperation with the national program of food production and conservation and in order to further the vocational education program in this State has approved the construction, maintenance and operation of canning plants by local boards of education at certain accredited high schools having approved vocational education programs of the Smith-Hughes type. These plants are serving and are to serve as vocational education laboratories for instructional purposes in connection with the production and conservation of food. This program of instruction is carried out by the vocational agriculture and vocational home economics teachers under the direction, administration, and supervision of the principal of the high school, and the local superintendent and board of education in cooperation with the State Department and State Board of Education. These canning plants are constructed

with the approval of the county board of education and the State Department of Education in accordance with plans, blue prints and specifications prepared by the State School Architect and approved by the State Superintendent of Education at school centers approved by the State Superintendent of Education and the State Board of Education for this type of construction.

"A number of county boards of revenue or like governing bodies have indicated the willingness to appropriate funds to local boards of education to assist in the construction of such canning plants and we have a request for a ruling from you as to the legality of such appropriations. Therefore, I shall appreciate your answer to the following question:

"Does Section 388, Title 52, Code of Alabama 1940, authorize boards of revenue and courts of county commissioners to make appropriations to county boards of education to assist in the construction of canning plants to be used as vocational education laboratories in schools duly recognized by the State Board of Education as centers for vocational instruction of the Smith-Hughes type?"

I am of opinion that your question should be answered in the affirmative, provided the "canning plants" to which you refer are used exclusively as "vocational education laboratories," are under the exclusive operation, management and control of the school authorities, and are not operated for commercial purposes or in competition with private enterprises.

This assumes, of course, that the appropriation will be only in such amount as is reasonably necessary for these purposes, and that "reimbursement" will be made as required by Section 388, of Title 52, supra.

The meaning of the term "reimbursement" as used in said Section 388 is not altogether clear, but upon reference to Section 381, Title 52, I must assume that it refers to such "federal aid" as is received by the state under an Act of Congress, approved February 23, 1917, 39 Stat. 930. (20 U. S. C. A. § 11 et seq.), or amendatory acts.

See also Quarterly Reports, Attorney General: Vol. 32, p. 14; Vol. 26, p. 73.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

April 20, 1945.

Hon. J. B. Powell,

Judge of Juvenile Court,

Circuit Court of Walker County,

Jasper, Alabama.

1. The three State agencies, or entities, namely, judge of the juvenile court, the board of public welfare and the county board of revenue, acting jointly, may determine or fix the salary of probation officers under the provisions of Section 360, Title 14, Code of 1940; however, any one of the three agencies or entities may defeat such determination or fixation.

2. The two boards should, by separate resolutions, determine their vote as to the determination or fixation of the salary of the probation officer, and when both of the two resolutions coincide with the vote of the judge of the juvenile court, the salary is fixed as required by statute.

3. The vote of a quorum (three members of the Board of Revenue of Walker County) is sufficient to authorize its vote as to the salary of the probation officer.

4. The vote of a quorum (four members of the Board of Public Welfare of Walker County) is sufficient to authorize its vote as to such salary.

5. The judge of the juvenile court may express his vote either viva voce or in writing; however, the minutes of such meeting should record the vote of each agency or entity voting.

6. The claim of a probation officer for expenses incurred in his official capacity should be presented in like manner as other claims against a county.

Opinion by Assistant Attorney General Smith.

Dear Sir:

Your request for an official opinion, bearing date of March 6, 1945, is as follows:

"Subject: Juvenile Probation Officer, Walker County.

"Section 360 of Title 13 of the 1940 Code of Alabama, provides for the appointment of a probation officer by the Juvenile Court, and that the Board of Revenue shall pay such probation officer 'a reasonable salary to be determined by the Judge, County Board of Public Welfare, and the Board of Revenue, acting jointly.'

"The Supreme Court in a recent opinion, present term, *J. R. White et al vs. J. B. Powell et al*, 6th Division #280, undertook to construe this statute but we are left in doubt as to the manner of fixing of such probation officer's salary, hence this letter.

"The County Board of Public Welfare and the Judge of the Juvenile Court has determined the number of Probation Officers to be appointed, and the Judge has made the appointment. The questions on which I would like an opinion are as follows:

"1. Can these three agencies, County Judge, Welfare Board and Board of Revenue, determine or fix the salary of the Probation Officer so appointed, or is this a 'dead end' statute which will prevent the selection of a probation officer?

"2. The Supreme Court *Supra* holds that fixation shall be by the three units, naming them, each unit having one vote, and that all three units must concur. Should the three units pass separate resolutions, and then meet jointly, and the chairman of each unit with the Judge cast their votes?

"3. Will a vote of a majority of the Board of Revenue (three members) authorize it to vote for the fixation of a salary for such probation officer, or will it take the unanimous vote to authorize it to do so?

"4. Will a majority vote of the Welfare Board authorize it to vote for the fixation of a salary for such probation officer?

"5. How should the Judge express his vote?

"6. Should a Probation Officer be appointed, does the statute authorize payment of expenses for such probation officer, and how should it be paid?

"There is a need and a demand for a Juvenile Probation Officer for this County, and the majority of the Board of Revenue are now for such officer, and the Board of Public Welfare is unanimous in favor of it. The only thing in the way is the fixation of a salary and providing for his expense. Will you not help us to arrange the fixation of the salary and expense?"

In my opinion, your inquiries, in a chronological order, must be answered as follows:

1. The judge of the juvenile court, the board of welfare, and the board of revenue may determine or fix the salary of the probation officer when acting jointly; however, it is possible for either the judge, or the board of welfare, or the board of revenue to defeat the determination or fixation of such salary, thereby giving the statute a so-called "dead-end" effect. To be more specific, the statute provides that these three entities acting jointly may determine or fix such salary, and any one of the three by voting for a different salary or by refusing to vote may prohibit such determination or fixation.

2. Your second inquiry should be answered in the affirmative. The statutory provisions, when interpreted in the light of orderly parliamentary procedure, appear to contemplate a joint meeting of the judge of the juvenile court, a quorum of the board of revenue, i. e., at least three members of the board of revenue, and a quorum of the county board of public welfare, which by statute consists of four members. After discussion, the board of revenue should pass its separate resolution as to the salary, and authorize and direct its chairman to so cast its vote. A like procedure should be followed by the board of public welfare. Then, if the decisions of the two boards coincide with the vote of the judge of the juvenile court, the salary is determined and fixed as required by the statute.

3. A vote of three members of the board of revenue will be sufficient to authorize its vote as to the fixation or determination of the salary.

4. A vote of four members of the board of public welfare will authorize it to vote for the determination or fixation of such salary.

5. The judge of the juvenile court may cast his vote either by viva voce or in writing, the statute being silent as to the method of voting. Needless to say, the resolutions of the two boards and the vote of the judge should be recorded in the minutes of the meeting.

6. The statute provides for the payment of the expenses incurred by the probation officer, and should be paid upon proper presentation of his claim to the county board of revenue in the same manner as other claims against the county are paid. Statutory provisions for such payments are found under Section 110, et seq., Title 12, Code of 1940. The Court's holding in **White v. Powell**, 6 Div. 286, was not directed at the officer being allowed his expenses, but at the allowance of the arbitrary figure of \$50.00 per month. Section 361, Title 13, Code of 1940, deals with this matter in the following words: "**Probation officers shall be reimbursed for actual expenses incurred in making investigations and in transporting and caring for children as provided by law when such accounts are approved by the judge of said court.**" (Emphasis added.) In the **White** case an attempt was made to fix a sum in lieu of actual expenses, but the statute contains no authority for so doing.

Authority for each of the above rulings is found in the case of **White v. Powell**, *supra*, or in the cited Code provisions.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

April 24, 1945.

Hon. W. R. Stuart,

Judge of Probate,

Baldwin County,

Bay Minette, Alabama.

Code 1940, Tit. 51, § 618—Filing Tax—Oil and Gas Leases—

The amount of filing tax to be paid upon an oil and gas lease is to be measured by the value of the interest thereby conveyed or the amount of money actually paid by the lessee to the lessor in consideration of the execution and delivery of the lease, without reference to annual rentals to be paid at the option of the lessee in order to prevent a forfeiture.

Opinion by Assistant Attorney General Matthews.

Dear Sir:

Your request for an official opinion, bearing date of April 18, 1945, is as follows:

"Re: Long term oil & gas leases.

"In the past few days there have been presented to me for record, several oil & gas leases, one of which I am herewith enclosing partially in blank.

"The most of these leases recite an annual rental and are for a term of ten years and so much longer as oil and gas is produced. The annual rental of some of these leases are in such amount, that if operated for a term of ten years, will exceed the minimum filing tax.

"I am herewith enclosing one of these long term mineral leases, showing the amount of the annual rental.

"Should I collect the filing tax for the full term of the life of the lease (ten years) or on the annual rental?

"Will appreciate an early opinion, as I am expecting quite a number of these leases offered for record in the near future."

The printed instruments to which you refer and of which you enclose a specimen, captioned "Oil, Gas and Mineral Lease," are not leases in the ordinary acceptation of that term. They amount merely to sale by the so-called lessor to the lessee of a privilege or license to enter upon the lands of lessor for a limited period of time for the purpose of exploration and discovery. In that sense, as ruled in former opinions of this office, such "leases" convey no doubt an interest in land, and operate as an option for the purchase of whatever oil, gas and minerals, may be produced therefrom, under the terms and conditions stated in such instruments. Such instruments while conveying a

certain interest in property are in large measure executory contracts merely, for breach of which an action for damages would lie.

The value of the interest so conveyed is purely a question of fact for determination by yourself as best you may. *Long v. Jasper Land Co.*, 217 Ala. 593, 117 So. 210. Such value will be, in my opinion, whatever amount of money was actually paid by "lessee" to "lessor" in consideration of the execution and delivery of the "lease," whether that amount is truly recited therein or not. If a merely nominal consideration is recited, you should investigate and make inquiry as to the consideration actually paid and accepted as in cases of conveyances of real estate, where the deed recites a nominal consideration and does not disclose the real consideration.

The so-called annual rentals based upon the number of acres of land involved are payable at the option of the lease for the privilege of extending the life of the lease and preventing its forfeiture. Such payments of "rent" may or may not be made. There is no obligation on lessee to make them and they cannot, in my opinion, be considered a factor in ascertaining the value of the interest created by execution of the lease. The value of the interest can be measured only by the amount paid for it at the outset in consideration of its execution—what is sometimes called the down payment, or the amount for which the lease could be sold, when executed, to a purchaser engaged in buying and selling such interests.

See also Opinion, Attorney General, to Judge of Probate, Barbour County, May 23, 1938, Biennial Report 1936-1938, page 622.

I am of opinion therefore that the amount of tax to be paid under Code 1940, Tit. 51, § 618 on such leases is to be measured by the consideration actually paid for their execution, without reference to any amounts of so-called annual rental payable at the option of the lessee to avoid a forfeiture of the lease.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

April 26, 1945.

Hon. Hunter Phillips,
Judge of Probate,
Choctaw County,
Butler, Alabama.

Counties—May pay premium for liability and property damage insurance on vehicles owned by the county.

Title 12, Section 12, subsection 23, 1940 Code authorizes counties to pay premium on liability and property damage insurance on trucks. Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion bearing date of April 12, 1945, is as follows:

"Please advise me at the earliest date possible on the following matter:

"The Commissioners Court of Choctaw County wishes to buy liability and property damage insurance on 14 units, which includes 1½ and ½ ton trucks owned by the county. The Court wishes to pay the premium on this insurance out of the gasoline fund and would like for you to give us an official opinion as to whether this money can be paid from the gasoline fund or general fund of the county."

It is my opinion that the county is authorized to pay a premium on liability and property damage insurance on trucks owned by the county. Premiums may be paid for liability and property damage insurance, and such payment should be made from the General Fund of the county.

On March 20, 1930, an opinion of the Attorney General stated that a county was without power to pay a premium on liability insurance for trucks owned by the county because the county governing body was not authorized by statute to purchase such insurance. Biennial Report of the Attorney General, 1928-1930, page 803. This lack of statutory authority was remedied in 1931 by an amendment, which now appears in Title 12, Section 12, subsection 23, Code of Alabama 1940, expressly authorizing the county to pay such premiums:

"The court has authority: *** 23. To insure in solvent companies the court-house, jail, machine shops and other buildings of the county against loss by fire and storm, to insure in solvent companies the trucks, tractors, gas shovels, graders, automobiles and other personal property of the county against loss by fire and theft and against liability for damages to person and property. Payments heretofore made for these purposes are validated. *** "

There is no doubt, therefore, that the county is authorized to purchase such insurance and that premiums may be paid from the General Fund Biennial Report of the Attorney General, 1936-1938, page 357; *Weaver v. Tidwell*, 228 Ala. 169, 153 So. 218.

A fact which should be considered by the Court of County Commissioners when deciding whether or not liability and property damage insurance should be procured for the county's trucks is that the county is seldom liable for the negligent acts of its employees, servants or agents. It has been the consistent ruling of the courts and of this office that the State, its governmental agencies, and the counties when performing governmental functions, cannot be held liable in actions of tort in the absence of express statutory authority. It has been held that the Military Department cannot carry public liability and property damage insurance because that department, being an arm of the State government, cannot be sued. Quarterly Report of the Attorney General, Vol. 37, page 92. Similarly, it has been held that the County Board of Education may not pay for property damage and liability insurance on county owned school busses. Quarterly Report of the Attorney General, Vol. 22, page 127. Neither can the Boys Industrial School pay premiums on property damage and liability insurance on cars and trucks owned by the school. Quarterly Report of the Attorney General, Vol. 6, page 66.

Cases discussing the county's liability for damage caused by the negligence of county employees uniformly hold that the county is not liable unless a statute or the Constitution allows such liability. *Moore v. Walker County*, 236 Ala. 688, 185 So. 175; *Hamilton v. Jefferson County*, 209 Ala. 517, 96 So. 628; *Green v. City of Birmingham*, 241 Ala. 684, 4 So. 2d 394; *Turk v. Board of Education*, 222 Ala. 177, 131 So. 436; *Warwick v. Mobile County*, 17 Ala. App. 206, 84 So. 396.

The fact that the county is seldom liable for the negligent acts of its servants or employees is, of course, based upon the theory that the county in the performance of governmental functions is an agency of the State and cannot be sued. This immunity from suit, however, applies only when the county is engaged in governmental activities. Constitution of Alabama 1901, Section 14. A county may in some instances be engaged in work which is not governmental in nature, but proprietary. Trucks used by the county may at some times and in some instances, be engaged in county work which is not purely governmental. At such times and in such instances, it is conceivable that the county may be sued successfully for damages caused by the negligent operation of a truck driven by a county employee. Our Supreme Court has intimated that such liability may exist. In the case of *Jones v. Jefferson County*, 206 Ala. 13, 15, the Court quotes Corpus Juris, to the effect that:

"Also a county is liable for its torts when it is acting, not as a governmental agent but as a private corporation, or is performing special duties imposed upon it with its consent or voluntarily assumed by it."
(Cases cited.)

See also 20 C. J. S., pages 1067, et seq.

It has also been held that the county is liable for property taken, injured or destroyed in the construction or enlargement of its highways by its agents or servants in an appropriate action. *Warwick v. Mobile County*, 17 Ala. App. 206, 84 So. 296. The county's liability in the latter case, however, is based upon the express provision found in Section 235 of the Constitution of 1901.

Since there is a possibility, however remote, that a county may be sued successfully in tort, we cannot say that liability and property damage insurance on county trucks is wholly unnecessary. The probability of suit is a matter to be taken into consideration by the county governing body in deciding upon the necessity for the insurance. If the governing body decides that such insurance is necessary, it is authorized by Title 12, Section 12, subsection 23 of the 1940 Code, to pay the premium.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

May 1, 1945.

Hon John T Frazer,
Judge of Probate,
Lee County,
Opelika, Alabama.

Code 1940, Tit. 22 § 189—Counties—Hospitals—

1. Hospitals established by joint action of a county and a city, or town, pursuant to Code 1940, Tit. 22, § 189, may not be leased to a private corporation or association for operation. Such hospitals must be operated continuously and exclusively through a board or commission selected jointly by the county and city, or town.

2. The costs and expense of such operation are liabilities on the part of the county and city, or town, for which they are jointly and severally liable, for the payment of which, or of any deficit caused by such operation, the county and city, or town, may appropriate their funds.

Opinion by Assistant Attorney General Matthews.

Dear Sir:

Your request for an official opinion, bearing date of March 22, 1945, is as follows:

"Further referring to the matter of the proposed purchase, jointly, by Lee County and the City of Opelika, of property and equipment for the purpose of operating a hospital, I will appreciate your kindness very much if you will give me an opinion on the following questions:

"1. If the County and City jointly appoint a group of persons to constitute a board of commission to operate a hospital for them, and a deficit occurs annually, can the County legally appropriate funds to pay and remove this deficit?

"2. If a group should organize a society and incorporate for the purpose of operating the hospital (such a corporation as is contemplated by 1940 Code, Title 10, Section 124 et seq.), could the County and City lawfully rent said properties to this incorporated group for operation by it, and if so, and a deficit occurred in operating, could the County then legally appropriate funds to pay and remove such deficit?

"3. Could the County legally rent the properties to a group mentioned in Question 1, and if such was done and a deficit occurred in operation of said properties, could the County legally appropriate funds to pay and remove deficit?

"In this connection reference is made to your letter directed to me under date of February 23, 1945, and the opinion which you mention, heretofore given to Judge J. C. Grady, Judge of Probate of Chambers County, dated April 6, 1942."

Power is expressly conferred by statute for the joint establishment, operation and maintenance of hospitals by counties, cities and towns. Code 1940, Tit. 22, § 189; Opinion, Attorney General to Judge of Probate, April 6, 1942, Vol. 27, page 18. Such power is exercised by making "all needful rules and regulations for the control and management" of such jointly established and operated hospitals, and must be exercised, by selection of some board, commission or other agency charged with the responsibility of operation and maintenance.

Such power includes the power to pay the cost or expense of operation and maintenance—a power arising by necessary implication from the express power.

I am of opinion therefore, for answer to question 1, that under the conditions stated in said question, the county may appropriate funds to pay a deficit arising in the course of operation.

The foregoing is predicated upon continuous and exclusive joint operation, management and control of the hospital so established by the county and city or town. There is in the statute no provision whereby the county and city or town, may lease the hospital to a private corporation or otherwise abandon or relinquish control and management. I am of opinion, therefore, for answer to question numbered 2 that the county and city, or town, are not authorized to lease the jointly established hospital to a corporation formed under Code 1940, Tit. 10, §§ 124 et seq., nor to pay any deficit arising from such unauthorized leasing and operation.

Inasmuch as the county is without power to lease such a hospital, answer to your third question is in the negative.

The result is that a hospital jointly established by a county and city or town, must be jointly operated, managed and controlled by a board or commission jointly selected as an agency for its operation. Any cost or expense, including an annual deficit, incurred in the course of such operation is a

joint and several liability of the county and city, or town, and as such enforceable against them jointly and severally to the same extent as other liabilities.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

May 3, 1945.

Hon. F. G. Nunnelley, Chairman,
Calhoun County Commission,
Anniston, Alabama.

Counties—May appropriate funds from the General Fund of the county to provide lunches for indigent school children.

Title 44, Section 18, Code 1940 authorizes County Commission to appropriate funds to provide lunches for indigent school children.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of April 18, 1945, is as follows:

"The County Commission of Calhoun County, Alabama, has been requested to appropriate \$500.00 to each of the four vocational schools in Calhoun County, for the purpose of providing lunches for school children in each of the said schools.

"The Commission is anxious to make the appropriation, but the legality of making same has been questioned, and I am therefore, asking for an opinion on this question."

It is my opinion that the County Commission of Calhoun County may make appropriations from the General Fund of the county for the purpose of providing lunches for school children, if such children are unable to pay for their lunches.

As I interpret your inquiry, the appropriation which you intend to make is for the purpose of providing lunches for school children who are indigent. Of course, I find no State laws authorizing the county to pay for lunches when the child or his parents are able to pay.

When the child and his parents are unable to provide a suitable lunch, it is my opinion that the county is authorized, under the provisions of Title 44, Section 18, Code of Alabama 1940, to appropriate funds with the approval of the State Department of Public Welfare. These funds must be disbursed

in accordance with the provisions of Title 44, Section 18, Code of 1940, which provides:

"§ 18. Counties may make other provisions.—The governing body in any county shall have the power and authority, with the approval of the state department of public welfare, to make other or further provision for the care of the poor and needy of the county. The disbursement of such funds shall be made through such agencies and in such manner as may be approved by the state department of public welfare."

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

May 8, 1945.

Hon. E. B. Norton, Superintendent,
Department of Education,
Montgomery 4, Alabama.

1. Title to real and personal property conveyed to School Trustees for school purposes vests in County Board of Education under Section 95 of School Code of 1927.

2. Said property may be conveyed by said Board of Education under Section 132, as amended, of the School Code of 1927.

Opinion by Assistant Attorney General Savage.

Dear Sir:

Your request for an official opinion, bearing date of March 20, 1945, is as follows:

"Mr. Hadley of this Department recently had a telephone conversation with your Mr. Savage relative to the legal right of the Washington County Board of Education to dispose of an abandoned school site formerly used for public school purposes by the Leroy Negro School.

"Mr. Savage requested that we furnish your office additional information and ask for an opinion in this case.

"I am setting out below the facts in the case:

"1. On April 4, 1940 R. L. Bowling and wife, Mamie P. Bowling, deeded property to Arthur Turner, Elliott Chanie, Willie Jackson and Jessie McConico as Trustees of the Negro School at Leroy in Washington County, Alabama. The original deed is enclosed.

"2. The title is still vested in the above named trustees.

"3. These trustees were not officially appointed by the Washington County Board of Education, but were elected by the Negro patrons of the community.

"4. The Washington County Board of Education states that this property is no longer needed for school purposes.

"We are anxious to make some disposition of this case and I shall appreciate an opinion at your earliest convenience."

Your attention is directed to Section 95 of the School Code of 1927, which is codified, without change, in the Code of 1940 as Section 71 of Title 52. Such section is as follows:

"§ 71. Property vested in county board.—All property, estate, effects, money, funds, claims, and donations now or hereafter vested by law in the public school authorities of any county for the benefit of the public schools of any county are hereby transferred and vested in the county board of education, and their successors in office. Real and personal estate granted, conveyed, devised or bequeathed for the use of any particular county, school district, or public school, shall be held in trust by the county board of education for the benefit of any such county school district or school."

Section 132 of the School Code of 1927 was amended in 1933 (General Acts, Extra Session, 1933, page 81), and as amended is codified in the Code of 1940 as Section 99 of Title 52, and this section is as follows:

"§ 99. Powers of county board.—The county board of education shall have the right to acquire, purchase by the institution of condemnation proceedings if necessary, lease, receive, hold, transmit and convey the title to real and personal property for school purposes. It may sue and contract, all contracts to be made after resolutions have been adopted by the board and spread upon its minutes. All processes shall be executed by service on the executive officer of the board."

By virtue of Section 95 of the School Code of 1927 (Section 71, Title 52, Code 1940), title to the Leroy High School now vests in the County Board of Education of Washington County, Alabama, regardless of the fact that the property in question was deeded to the trustees of said School, and, it is my opinion that under said Section 132 of the School Code of 1927, as amended, (Section 99 of Title 52, Code 1940) the County Board of Education of Washington County, Alabama, is authorized to dispose of this property and a deed from said Board of Education to the purchaser would pass its title thereto.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General

May 9, 1945.

Hon. Bradley G. Brown,

License Inspector,

Jefferson County,

Birmingham, Alabama.

Motor carriers leasing motor vehicles from the Defense Plant Corporation and operating such upon their regular routes must provide licenses for same.

Opinion by Assistant Attorney General Smith.

Dear Sir:

Your request for an official opinion, bearing date of April 13, 1945, is as follows:

"It has come to my attention that several of the motor freight lines, hauling for hire, along with several plants in Jefferson County are using motor trucks and motor vehicles leased to them by the Defense Plant Corporation. The motor freight lines are hauling freight over their regular routes in these vehicles and the plants are using the vehicles leased by them in the regular performance of their work. Some of these vehicles are being operated without any license plates and some of them have procured plates from the license issuing authority, free, on an affidavit that they are the property of the Defense Plant Corporation, an instrumentality of the United States Government.

"I have taken the position that these vehicles are being used for hire and in a gainful occupation and are not being used by the United States Government, therefore, they are liable for an Alabama license plate, the same as any other vehicle using the highways of this State. As the plants, using these vehicles, are engaged in the performance of contracts for war materials and the trucking companies do, on some occasions, haul materials in the war effort, there is a difference of opinion as to the liability of these persons for licenses, therefore, I will appreciate you favoring me with an official opinion on this question."

In my opinion you are correct in the position you have assumed.

It is elementary that a state cannot impose a tax on the Federal Government, or any branch thereof, or any property owned by either in the absence of statutory authority; and, with certain exceptions not here applicable, the property of the Defense Plant Corporation is not subject to State taxation. See Section 610, Title 15, U. S. C. A. (Pocket Supplement). However, this immunity from taxation is an implication drawn from the United States Constitution, and for the protection of the Government, it extends no further than is necessary for that purpose. **Indian Territory Illuminating Oil Co. v. Board of Equalization**, 53 S. Ct. 388; **Fox Film v. Doyal**, 52 S. Ct. 546. This exemption does not extend to anything lying outside or beyond governmental functions and their exertion. It does not exist where no direct burden is laid upon the governmental instrumentality and there is only a remote, if

any, influence upon the exercise of the functions of the government. **Western Union Telegraph Co. v. Attorney General**, 125 U. S. 539, 31 L. Ed. 790, 8 S. Ct. 916. Also compare **Alabama v. King Boozer Lumber Co.**, 314 U. S. 1, and **Ken Realty Co. v. Johnson**, 138 Fed. 2d. 809. In the latter case, Circuit Judge Sibley, speaking for the U. S. Circuit Court of Appeals, stated:

"(1, 2) Everyone recognizes that not only the instrumentalities of government but all the property of the United States, however, used, are exempt from State taxation, by reason of a mutual immunity implied in the Federal Constitution, and first stated in *McCulloch v. State of Maryland*, 4 Wheat. 316, 4 L. Ed. 579, *** The Alabama Code also, Title 51 (Sec. 2(a), exempts all property, real and personal, of the United States.' This mutual immunity is to be given a practical application so as to attain its purpose, but without unnecessary interference with the right of taxation. **It is personal to the government, State or Federal, and is not transferable to or to be used for the special protection of the citizen.** An indirect and remote advantage to government, such as the probability that the services of contractors may be gotten by government for less if their pay is untaxed, or that public property may be sold for more if exempt from taxation for a time, will not justify the extension of the immunity to the contractor or purchaser." (Underscoring added.)

Section 704, Title 51, Code of 1940, requires the purchase of a motor vehicle license by, "Every person, firm or corporation, who desires to operate a motor vehicle upon the highways of Alabama." A perusal of our statutes pertaining to the licensing of motor vehicles will disclose a clear legislative intent that the persons who use our highways shall pay for such use. The owner of a vehicle is not required to purchase a license. In fact, the owner of a motor vehicle may let it remain off the highways indefinitely and not be required to purchase a license. However, every person who desires to operate a motor vehicle upon the highways is required, as a condition preceding such privilege, to purchase a license tag. The Defense Plant Corporation is immune from this tax, but it cannot convey such immunity to a lessee of a motor vehicle.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

May 16, 1945.

Hno. J. W. Heustess, Clerk,

Board of Revenue,

Montgomery County,

Montgomery, Alabama.

Local Acts 1939, page 259—Montgomery County—Contingent Fund
—County Purposes—

The Board of Revenue of Montgomery County may appropriate money from its Contingent Fund for purchase of copies of pending legislation that may in the judgment of the Board be necessary to keep itself informed as to pending legislation that may affect the interest of the county.

Opinion by Assistant Attorney General Matthews.

Dear Sir:

Your request for an official opinion bearing date of May 11, 1945, is as follows:

"The Board of Revenue of this county desires to comply with its responsibility to the fullest. In order to keep its members posted it is necessary to purchase from the Clerk of the House and the Secretary of the Senate, at their standard prices, copies of some bills pending from time to time in the Legislature; and, what is commonly known as 'The Readings.' In the judgment of the Board of Revenue this is a necessary and needful expense for a county purpose not otherwise provided for by law; but, one in their judgment is worthy and for the interest of the county. Would such an expenditure be a legal one when created against the 'Contingent Fund' of this county as provided by local acts at pages 259 and 260 of the Local Acts of Alabama 1939?"

By Act No. 430, S. 485, approved September 15, 1939, (Local Acts 1939, page 259) the Board of Revenue of Montgomery County was authorized to appropriate not more than \$7,000 annually "for any county purposes not otherwise provided for by law that in their judgment are worthy and for the interest of the county." Such appropriation is called "Contingent Fund."

From this fund the county may pay \$1,200 annually to a representative of the State Tax Commission for ex officio service and expenses of maintaining an office in the county, and \$900 annually to the Circuit Solicitor for expenses, including clerical and stenographic help, ex officio services in attending the Juvenile and Domestic Relations Court and for the performance of "such other duties as are not now provided by law." (Sections 2 and 3).

The local act makes no express provision otherwise for disbursement of the Contingent Fund, but these two specific provisions will serve to indicate possibly the nature of such disbursements as are to be implied from the words "county purposes not otherwise provided for by law that in their judgment are worthy and for the interest of the county."

These words, in my opinion, vest in the county governing body a broad discretion in selection of the purposes for which the fund may be disbursed, subject to restriction only by any constitutional provision that might inhibit the disbursement.

The only restriction upon such disbursement would seem to be that it must not be made in violation of Section 94 of the Constitution "in aid of, or to any individual, association, or corporation whatsoever." In other words the disbursement must be made for some public purpose as distinguished from a private purpose, and must be made in the "interest of the county" as determined by the county governing body.

Numerous powers of county governing bodies are declared at length and in detail in Section 12 of Title 12 of the Code of 1940. Manifestly by the local act in question the legislature intended to confer additional powers on the Montgomery County Board of Revenue, and to expand and extend those enumerated in Section 12, Title 12 of the Code. Otherwise there was no occasion for the act at all, and it is not to be presumed the legislature intended to do a vain or nugatory thing. Some field of operation must be given the act if that is reasonably possible and not in conflict with constitutional restraint.

Any expense or disbursement that would in the judgment of the Board contribute to the interest of the county as a whole and protect such interest would, in my opinion, come within such field of operation of the local act. I find no authoritative definition of the words "county purposes" by our court of last resort, but such words have been variously defined by the courts of other states. **10 Words and Phrases 107.**

Among such definitions it has been said that the words denote "purposes which promote the welfare of the county as a whole and its citizens," and such "matters of public concern as may peculiarly affect the people of the county in their property and local interests." **Johnson v. Durham**, 191 Ark. 192, **Gadsden County v. Green**, 22 Fla. 102. 110.

Our own Supreme Court has approved employment by a city under its delegated police power, of agents and attorneys to look after its interests in the legislature as an exercise of its "necessarily implied power to protect and promote its well-being before the legislature and to incur and pay reasonable compensation thereof." **Fitts v. Commission of City of Birmingham**, 224 Ala. 600, 602(3), 141 So. 354.

The Court distinguished that case from **Stone v. State**, 220 Ala. 437, 125 So. 653, and pointed out that in the latter case petitioner "relied upon the express power of the county board to employ him."

I see no reason why the principle of the **Fitts** case, *supra*, does not apply to counties, as well, where the legislature has conferred upon them, as in the present instance, a broad discretion to expend their funds "for the interest of the county," without undertaking to define or restrict such interest.

If therefore the Board of Revenue by an appropriate resolution spread upon its minutes deems it necessary for the county's interest to incur the ex-

pense in question in order to keep itself informed as to pending legislation that may affect the interests of the county, in my opinion it may do so.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

May 16, 1945.

Hon. J. B. Hawk, Clerk,

Circuit Court,

Marshall County,

Guntersville, Alabama.

Only one fee is allowed for issuing a capias or warrant for a particular defendant for the crime involved, regardless of the number issued, under Section 69 of Title 45, Code 1940.

Opinion by Assistant Attorney General Savage.

Dear Sir:

Your request for an official opinion, bearing date of March 27, 1945, is as follows:

"Please refer to Title 45, Section 69, of the Code of 1940, and give me your official opinion on the following:

"You will please note the language of the above referred to section, where it reads, 'For issuing **EACH** capias, or warrant (once) fifty cents.'

"Then please refer to Title 15, Section 172, which reads as follows: 'As many writs of arrest may be issued as necessary; and after any forfeiture is taken, another writ of arrest may be issued without an order'

"Now my question is:

"Is it your opinion that the Department of Corrections and Institutions can only pay 50 cents for issue of capias regardless of how many were issued, such applying of course to only one and the same Defendant and in one and the same cause? And please bear in mind the word **EACH** that appears in said Title and Section.

"I have just read an opinion rendered by your office to, Hon. O. L. Andrews, Clerk Jefferson County, Birmingham, Alabama, on June 21, 1944, which appears in Volume 35 of the Quarterly Reports at page 106, in which reference is made to an opinion rendered Hon. Roy O. Hill, under date of March 4, 1937, in which this point is involved. And in the paragraph at the bottom of page 107 reference is made to this language; 'for issuing capias or warrant (once) fifty cents' and the word **EACH** is left out.

"To make myself clear, I don't know whether you mean that only one fee of 50 cents can be charged regardless of the number of writs issued or one fee of 50 cents for each writ issued. I think that it means the latter."

It is my opinion that the words used in Section 69 of Title 45, Code 1940, setting out the fee allowed for the issuance of a capias or warrant are to be construed as allowing a fee of only fifty cents regardless of how many warrants or writs are issued, provided the same applies to one and the same defendant in one and the same case. The words used in said Section relative to said fee are as follows: For issuing each capias or warrant (once), fifty cents." It is my opinion that by the use of such language and especially by the use of the word "(once)", the Legislature intended that only one fee would be allowed for the issuance of a warrant or capias involving the same defendant in a particular case. Any other construction, as I see it, would give no meaning to the word "(once)" as it is so used in said Section.

While the opinion rendered Hon. Roy O. Hill, to which you refer, was not directly on the question you submit, yet this same question was discussed in that opinion, and the author of that opinion said therein: "I am of the opinion that if the Legislature intended that only one of any certain item be charged for only once, it would have said so as it did in the instance cited above." The instance cited above was the language used in Section 69 of Title 45, covering the fee allowed for issuing a warrant or capias and which I have quoted above. The reasoning set forth in said opinion rendered Mr. Hill concerning the fee allowed for issuing a capias or warrant and other fees specified in said Section 69 sustains the conclusion hereinabove reached.

You also refer to an opinion rendered by this office to Hon. O. L. Andrews, Clerk of the Circuit Court of the Tenth Judicial Circuit of Alabama, on June 21, 1944, calling attention to the fact that the word "each" was left out of the words in quotation in the last paragraph on page 107 of such opinion. The word "each" was inadvertently omitted.

Section 172 of Title 15, Code 1940, has no influence on the question you submit. Section 79, Title 11, Code 1940, provides that, "No fee must be taken but in cases expressly provided by law." Said Section 69 provides for the fee under consideration and the fee permitted by said Section 69 is the only fee that may be lawfully collected.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

May 16, 1945.

Hon. Wm. W. Hill,

Judge of Probate,

Montgomery, Alabama.

Mutual insurance companies without capital stock which are organized under Article 2 of Chapter 5 of the Code of 1940 are not liable for a charter fee payable to the Probate Judge, as prescribed by Section 6 of Title 10 of said Code, upon filing in the Probate Office Articles of Incorporation.

Opinion by Assistant Attorney General Savage.

Dear Sir:

Your request for an official opinion, bearing date of May 1, 1945, is as follows:

"There was offered for incorporation in this office Articles of Incorporation of Alabama Farm Bureau Mutual Insurance Service, Inc., for the purpose of operating as a mutual insurance business.

"They incorporate under Title 28, Section 106 of the Code of 1940. In reading this title we find under Section 117 tax and fees paid by mutual insurance companies but we do not find where they pay any charter fee or any fee for the Secretary of State.

"The Articles of Incorporation do not set out the capital stock and so we are at a loss as to exactly what fees to collect. This is the first of this type received in this office.

"We are interested in whether or not we should collect charter fee and if so, the amount on a mutual insurance company, which does not set out in its charter the amount of its capital. We would thank you to give us a prompt answer to this. We are holding this charter subject to the opinion from your office."

You inquire whether or not you should collect a charter fee in this case, and, if so, the amount.

Section 6 of Title 10 of the Code of 1940 provides for the collection of a charter fee by the Probate Judge upon corporations organized under Article 1 of Chapter 1 of Title 10 of said Code and the amount of the charter fee is based upon the proposed capital stock—"One dollar for every one thousand dollars of the proposed capital stock, but in no case less than five dollars." You advise that the Articles of Incorporation in question do not set out the capital stock.

We have discussed this matter with the Acting Superintendent of Insurance and he advises that the Incorporators have amended the original Articles of Incorporation filed in your office, by adding a provision showing that the corporation does not have any capital stock.

Former opinions of this office hold that the fees and taxes set out in Article 1 of Chapter 1 of Title 10 of the Code of 1940 apply only to business corporations organized under said Article 1; that corporations organized under other articles of the Code are liable only for the fees and taxes provided for by the articles of the Code pursuant to which, or under which, the corporation is organized. See Quarterly Report of Attorney General, Vol. VIII, page 121; Biennial Report of Attorney General, 1934-36, page 123; and Biennial Report of Attorney General, 1930-32, page 883.

The corporation in question was organized under Article 2 of Chapter 5 of the Code of 1940. Section 117 of said Article 2, as amended by General Acts of the Legislature, Regular Session, 1943, page 305, provides for the fees and taxes to be paid by this corporation. Since the corporation in question is organized without capital stock and not organized under Article 1 of Chapter 1 of the Code of 1940, our conclusion is that said corporation is liable only for the fees and taxes prescribed by Section 117 of Title 28 of said Code, as amended, and, therefore, no charter fee is to be collected by you in this case.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

May 18, 1945.

Hon. Edgar Underwood,

Judge of Probate,

Franklin County,

Russellville, Alabama.

County Service Commissioner—Act approved July 6, 1943 (General Acts Alabama, Regular Session 1943, page 587), authorizing county governing bodies to allow claims filed by said Service Commissioner covering the following items: Necessary equipment for office including typewriter, desk, filing cases, chairs, stationery, postage, telephone and telegraph expense.

Opinion by Assistant Attorney General Savage.

Dear Sir:

Your request for an official opinion, bearing date of April 12, 1945, is as follows:

"A County Service Commissioner has been appointed by the Court of County Revenue of this county and \$2,400.00 per year, appropriated; \$2,100.00 for salaries of the commissioner and his secretary, leaving \$300.00 for the expense of his office. His office is located in one room of the courthouse. He will have expense consisting of purchase of equipment, typewriter, desk, filing cases, chairs and etc.; stationery, postage and telephone and will probably have some telegraph expense.

"Is the Act of the Legislature, approved July 6th, 1943, 1943 Acts, page 587, broad enough to authorize the payment by the county for each of these items?

"If you think any one or more of these items may be paid for by the county but not all of them, please specify which can be paid for by the county and which cannot be paid for by the county."

The general rule is that Courts of County Commissioners, Boards of Revenue, and other like governing bodies, are courts of strictly limited jurisdiction, and can exercise only such powers as are conferred upon them by statute.

Certain statutory authority of such county governing bodies is enumerated in Section 12 of Title 12, Code 1940, and subdivision 25 of said Section of the Code gives such county governing bodies authority "To exercise such other powers as are, or may be, given by law."

The Act of the Legislature (General Acts of Alabama, Regular Session 1943, page 587) provides for the method of appointment of a County Service Commissioner by the county governing body and Section 3 of this Act prescribes his duties. Section 5 of such Act requires the County Service Commissioner to maintain an office at the County Seat. It is required by Section 6 of this Act that, "The County Service Commissioner shall be furnished an office at the expense of the county and shall be allowed all necessary expenses for the conduct of his office, including clerical or stenographic assistance, and such travel expense within the county as may be necessary for the purpose of carrying out the provisions of this act."

With emphasis laid upon the duties required to be performed by the County Service Commissioner by said Act of the Legislature, it is my opinion that the Court of County Revenue of Franklin County, Alabama, is authorized to equip his office with a typewriter, desk, telephone, such filing cases, chairs, stationery and postage as may be required in the conduct of the duties required by him, and is also authorized to pay for his telegraph expense. In other words, it is my judgment that the Act in question is broad enough to authorize said Court of County Revenue to pay for each of the items named above.

Claims covering the above items should be filed with the Court of County Revenue by the County Service Commissioner, and should be audited and allowed in the usual manner.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

May 28, 1945.

Miss Ethel R. Hawley, Acting Director,
Bureau of Vital Statistics,
Department of Health,
Montgomery 4, Alabama.

Code 1940, Title 21, § 174—U. S. Veteran's Administration—Certified Copies of Records—

Custodians of public records must furnish without charge whatever number of certified copies of such reports may be required to determine a person's eligibility to benefits payable by or through the United States Veterans' administration.

Opinion by Assistant Attorney General Matthews.

Dear Madam:

Your request for an official opinion, bearing date of May 23, 1945, is as follows:

"In an opinion issued by you on April 12, 1943, addressed to Dr. B. F. Austin in regard to free copies to veterans you state that 'If a person is entitled to benefits made available by the United States Veterans' Bureau and desires copies of records on file in the Bureau of Vital Statistics to be used in determining the eligibility of such person for such benefits, then he is entitled to a free copy of any record on file in the Bureau of Vital Statistics.' We have taken this to mean that he is entitled to **one** free copy. We are having sometimes two or three requests for certified copies of certificates to be used for the Veterans Administration sent in, in some cases, by different service officers. In other cases by the same service officer who states that the several portions of the claim go to different places and each has to have a copy of the record attached. For instance, the insurance goes to one place and other claims go to another office all under the Veterans Administration. Are we supposed to furnish all these copies free?

"Judge G. C. Blanton of Selma has just been talking to me and he says he will call you and explain the matter to you. After you hear from him we will appreciate it if you will give us an official opinion as to what, under the law, is required of us."

Code 1940, Title 21, § 174 provides that "whenever a copy of any public record is required" by the United States Veteran's Bureau, or its successor, in order to determine a person's rights to benefits payable by the Bureau "the official charged with the custody of such public record shall without charge provide the applicant for such benefits or any person acting on his behalf or the representative of such bureau with a certified copy of such record."

This language in my opinion does not limit the number of copies that must be furnished without charge. **Whenever** a copy is required for the purposes expressed in the statute it must be furnished without charge.

The opinion of this office to which you refer (Quarterly Report, Attorney General, Volume 31, page 15) relates to the purposes for which a copy, or copies, must be furnished without charge. I find nothing in the opinion to warrant an inference that only one copy must be furnished without charge.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

May 28, 1945.

Hon. S. H. Hendrix, City Clerk,

City of Mobile,

Board of Commissioners,

Mobile, Alabama.

Cities, municipalities—Not authorized to make donations to Chamber of Commerce under facts stated.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of May 15, 1945, is as follows:

"I enclose herewith copy of a Resolution this day adopted by the Board of Commissioners of the City of Mobile requesting you, as Attorney General, to render an opinion as to whether the City has the legal authority to become a member of the Chamber of Commerce of the City of Mobile, or to pay dues to such Chamber of Commerce or to contribute funds in any manner to such Chamber of Commerce.

"Your kind consideration of this request and a reply will be greatly appreciated."

The enclosed copy of the Resolution is as follows:

"A RESOLUTION REQUESTING THE ATTORNEY GENERAL TO RENDER AN OPINION TO THE BOARD OF COMMISSIONERS OF THE CITY OF MOBILE AS TO WHETHER THE CITY HAS THE LEGAL AUTHORITY TO BECOME A MEMBER OF THE CHAMBER OF COMMERCE OF THE CITY OF MOBILE, OR TO PAY DUES TO SUCH CHAMBER OF COMMERCE OR TO CONTRIBUTE FUNDS IN ANY MANNER TO SUCH CHAMBER OF COMMERCE.

"BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE CITY OF MOBILE that the Attorney General of the State of Ala-

bama be, and he is hereby, requested to advise this Board whether the City of Mobile has the legal authority to become a member of the Chamber of Commerce of the City of Mobile, whether it has the legal authority to pay membership or other dues to such Chamber of Commerce and whether it has the legal authority to make donations to such Chamber of Commerce.

"As required by Section 242 of Title 55 of the Alabama Code of 1940, as amended by an act of the Legislature of the State of Alabama approved June 28, 1943, the following facts are set forth following the nature and character of the foregoing question which makes the advise or opinion sought necessary to the present performance of the acts sought to be done and which must be immediately performed:

"As is commonly known Chambers of Commerce of their respective localities seek to induce new industries and mercantile establishments to locate in and carry on business in their respective communities, prepare and distribute literature and pictures which advertise the advantages and the beauty of their respective localities, seek advantageous legislation and resist inimical legislation which might affect their respective localities, and otherwise engage in activities which are thought to be beneficial to the areas in which they are located.

"The City of Mobile formerly paid membership dues to the local Chamber of Commerce, but this practice was discontinued on advice of the City Attorney based on opinions by the Attorney General of Alabama rendered to Honorable Sim L. Howell, Chairman, Morgan County Board of Revenue and Control, Decatur, Alabama, on April 4 and June 13, 1944, to the effect that county boards of revenue are without authority to appropriate county funds to Chambers of Commerce. The City Attorney's opinion was to the effect that he could not advise the Board that it had the right to contribute to the Chamber of Commerce, unless an opinion of the Attorney General be rendered to the contrary, or unless a valid court decree be rendered to the contrary.

"The City Clerk is hereby directed to transmit a certified copy of this resolution to the Attorney General of the State of Alabama.

"Adopted: /s/ S. H. Hendrix

"5-15-'45. City Clerk."

The two questions asked above are in substance: (1) May the City of Mobile make donations to the Chamber of Commerce of the City of Mobile, the latter association being engaged in those activities described in paragraph 3 of the Resolution? (2) May the City of Mobile join the Chamber of Commerce of the City of Mobile, and pay membership or other dues to this association?

In answer to number (1) above, it is sufficient to say that Section 94 of the Constitution of Alabama, 1901, in our opinion, prohibits the donation. Quarterly Report of the Attorney General, Vol. 35, page 7, and Quarterly Report of the Attorney General, Vol. 35, page 84. As you know, Section 94 of the Constitution provides:

"Sec. 94. The Legislature shall not have power to authorize any county, city, town, or other subdivision of this state to lend its credit, or to grant public money, or thing of value in aid of, or to any individual, association, or corporation whatsoever, *** "

In answer to number (2) above, since it is not stated in your inquiry the amount of the dues, membership fees, or otherwise, to be paid by the City of Mobile to the Chamber of Commerce of the City of Mobile, or what duties and obligations of the City would incur in joining this organization, or for what purpose the dues are to be used, we are unable to state whether the City may pay such dues or join such organization.

We shall be glad to extend this opinion by answering question number (2) above if you will outline the above information.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

June 1, 1945.

Hon. Frank O. Deese,

Judge of Probate,

Dale County,

Ozark, Alabama.

Courts of County Commissioners—Highways and Highway Department—Right-of-ways—Code of 1940, Title 23, Section 43; Title 23, Section 25, as amended; Acts of 1943, page 492.

The governing body of a county may pay the entire cost of obtaining a right-of-way for the construction of a public road.

Opinion by Assistant Attorney General Arbuthnot.

Dear Sir:

Your request for an official opinion, bearing date of May 26, 1945, is as follows:

"In view of Sec. 25, Title 23, of an act approved July 10, 1943, may a county pay the full cost of right-of-way for a state highway, as its part of the project? Dale County Commissioners have been asked by the State Highway Department to furnish the right-of-way for the state highway leading from Arifton in Dale County to Clio in Barbour County. About one and one-half miles of this road is in Dale. I desire your opinion as to whether our commissioners may legally pay the entire cost of this right-of-way, or must the state pay half this cost?

"It is highly important that I have a prompt reply to this inquiry and same will be highly appreciated."

The Highway Department informs me that the cost of the project for which the right-of-way is to be obtained is to be defrayed by the State and Dale County, and that Dale County has agreed to pay the total cost of obtaining the right-of-way as part of its contribution to the cost of the project.

Under the provisions of Act No. 527, General Acts of Alabama of 1943, page 492 (Cumulative Pocket Part, Code of 1940, Title 23, Section 25), the county can only be required to pay one-half of the cost of obtaining a right of way, the other half to be paid by the State or municipality. Prior to the passage of Act No. 527, the right-of-way was to be acquired "without expense to the state."

Under the provisions of Title 23, Section 43, Code of Alabama 1940, the county governing bodies of the several counties are vested with broad powers in reference to public roads, bridges and ferries within their respective counties. **Biennial Report of the Attorney General, 1934-36, page 160; Quarterly Report of the Attorney General, Volume 31, page 54.**

Under said Section, such governing bodies may "make and enter into such contracts as may be necessary, or as may be deemed necessary or agreeable *** to build, construct, make, improve and maintain a good system of public roads, bridges and ferries in their respective counties ***."

Act No. 527, supra, limits the amount that the county may be required to pay for obtaining a right-of-way. However, I do not think that this Act should be construed to mean that the county cannot pay the entire cost of securing the right-of-way, if, in the opinion of the county governing body, it is advisable to do so. The governing body has authority to contract with the State Highway for the payment of the entire cost of obtaining the right-of-way.

In view of the above conclusions, it is my opinion that the County Commissioners of Dale County may legally pay the entire cost of obtaining the right-of-way under consideration.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

June 6, 1945.

Hon. John T. Frazer,
Judge of Probate,
Lee County,
Opelika, Alabama.

Commissioners ineligible to certain offices—Code of Alabama 1940,
Title 12, Section 7.

1. Where the Code provides that county commissioners are ineligible for "any other office," the statute cannot be reconstructed to incorporate exceptions thereto in the interpretation of legislative intent.

2. A notary public holds a public office.

3. Under statute prohibiting county commissioner from holding "any other office," the statute may be construed as written as a matter within the competency of the Legislature and a county commissioner cannot hold a position of notary public or any other public office.

Opinion by Assistant Attorney General Gallion.

Dear Sir:

Your request for an official opinion, bearing date of May 15, 1945, is as follows:

"Please advise me whether or not a member of the Court of County Commissioners, who is a bonded county official, may serve in the capacity of Notary Public.

"This question has caused quite a lot of confusion in Lee County and no one seems to be able to give a definite opinion under the present statutes.

"Your early opinion will be appreciated."

For a determination of the question presented, a review of our laws relating thereto is first made.

The Constitution of 1901, Section 280, reads in part as follows: " *** nor, unless otherwise provided in this Constitution, shall any person hold two offices of profit at one and the same time under this State, except justice of the peace, constables, notaries public, and commissioner of deeds." (Emphasis supplied.)

Code of Alabama 1940, Title 41, Section 5(7), dealing with eligibility to office sets out the following: " *** nor shall any person hold two offices of profit at one and the same time under this state, except notaries public."

This office has previously given an opinion that the Constitution of this State is only a limitation upon the power of the Legislature to enact laws. Unless that power is restricted by the Constitution, the Legislature may enact such laws as it sees fit. The Constitution does not by Section 280 prohibit a further restriction, by the Legislature, of the qualification of the officeholders. **Biennial Report of the Attorney General, 1926-1928, page 462.**

It has been held that the Legislature may define the qualifications of officeholders. *State, ex rel. Goodgame*, 153 Ala. 646.

It has been further held in the opinion of this office rendered in **Biennial Report of the Attorney General, 1926-1928, page 462, supra**, that the later Code Section "nor shall any person hold two offices of profit at one and the same time under this state, except notaries public" was tantamount to a direct prohibition of all other offices except notaries public. Thus the omission of the exception was tantamount to a direct prohibition of exceptions.

Similarly, the instant Code Section relating to the eligibility of county commissioners, Alabama Code 1940, Title 12, Section 7, reads as follows:

"No county commissioner is eligible to or must discharge the duties, either as principal or deputy, of any other office."

There are no exceptions set forth in the Code Section, *supra*. In Alabama Southern Digest, Volume 25, Key No. 190, and cases cited thereunder, the following rule of law is set forth: "Where a statute is plain and unambiguous there is no room for reconstruction." The terminology rendering a county commissioner ineligible of "any other office" obviously means any other public office.

Our Supreme Court stated in *Governor, Use, etc. v. Gordon*, 15 Ala. 72, that:

"A notary public who receives his appointment and commission from the Governor of the State, upon recommendation of the judge of the county court, must be regarded as a public officer of the county."

Numerous cases throughout the land are in accord with the decision above, i. e., a notary public is a public officer. See annotations to *North Carolina v. Watson*, 201 N. C. 661, 161 S. E. 215, in 79 A. L. R. 449; *Sonfield v. Thompson*, 42 Ark. 46, 48 Am. Rep. 51. A good summarization of these holdings is in *Brickett v. Knight*, 85 S. E. 418, 169 N. C. 333, where the court stated:

"It seems therefore to be established by every test that can be applied that *** the position of notary public has been a public office."

It is my opinion that we must accept as within the competency of the Legislature the setting forth of the eligibility of county commissioners, and where said Legislature expressly directs that "no county commissioner shall be eligible for any other office," there is no room for reconstruction.

Since it has been well established that a notary public is a public office, it is, therefore, my personal opinion, in the light of the above, that a county commissioner cannot also hold the office of notary public.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

June 12, 1945.

Hon. R. E. McAdory,

Solicitor, Tenth Judicial Circuit of Alabama,

Jefferson County,

Birmingham 3, Alabama.

Solicitors—Costs and Fees—Jefferson County—Code of 1940, Title 13, Section 242; Title 62, Sections 361 and 365.

Solicitor's fees collected from defendants who have been convicted in prosecutions in Jefferson County by the Solicitor of the Tenth Judicial Circuit shall be paid into the Solicitor's Fund of Jefferson County.

Solicitor of the Tenth Judicial Circuit is authorized to make such expenditures from the Solicitor's Fund of said County as are authorized under the provisions of Title 62, Section 365, Code of 1940.

Opinion by Assistant Attorney General Harris.

Dear Sir:

Your request for an official opinion, bearing date of April 30, 1945, is as follows:

"Section 242 of Title 13 of the 1940 Code of Alabama provides that: 'All fees which may by law be taxed as solicitors' fees against defendants on convictions secured by a solicitor who is paid a salary by the State, belong to the State, and when collected, must be paid into the State treasury.'

"Section 365 of Title 62 of the 1940 Code of Alabama provides as follows:

"The circuit solicitor of the circuit shall have the power and authority to employ all shorthand reporters necessary to properly report the proceedings of the grand jury and transcribe the same, and stenographer or stenographers for the office work of such solicitor, and fix the compensation of such reporter, stenographer or stenographers, or other assistants, and such compensation shall be

payable out of the general fund of the county upon warrants drawn upon the treasurer by the circuit solicitor in favor of such reporter, stenographer, stenographers, or other assistants, as hereinafter provided. The circuit solicitor shall have the power and authority to employ any assistant or assistants and to incur any expense he may deem necessary to properly administer justice, and such expense shall be paid out of the solicitor's fund of such county, provided there is a sufficient amount in said fund to pay said compensation or expenses at the time the same is due under the provisions of this subdivision; provided further, that if there is not sufficient amount in said solicitor's fund to pay such compensation or expenses at said time, the treasurer shall pay said amounts out of the general fund of said county, when authorized by the Board of Revenue, on warrant drawn by the circuit solicitor, provided the amount so expended or drawn out of the general fund of said county shall not exceed the sum of seven thousand five hundred dollars in any one year.'

"Section 365 of Title 62 is a section within Article 7 of said Title 15; and Section 361 of Title 62, which is the first section within said Article 7, states that: 'The provisions of law contained in this article shall be applicable only to the Tenth Judicial Circuit.' Jefferson County, Alabama comprises the Tenth Judicial Circuit.

"I would appreciate your advising me at your convenience upon the following question: Should the clerk of the circuit court in Jefferson County pay solicitors' fees collected from defendants who have been convicted in Jefferson County in prosecutions by the solicitor of the Tenth Judicial Circuit into the State Treasury, or should such fees be paid into the Solicitor's Fund in Jefferson County?"

Title 62, Section 365, Code of Alabama of 1940, which Section is set out in your request, under the provisions of Section 361 of said Title, is applicable only to the Tenth Judicial Circuit, and therefore, must be treated as a special law rather than a general law.

Under the provisions of Title 13, Section 242, Code of Alabama 1940, "All fees which may be by law taxed as solicitor's fees against defendants on convictions secured by a solicitor who is paid a salary by the state, belong to the state, and, when collected, must be paid into the state treasury." In its relation to Section 365, supra, Section 242, must be regarded as a general statute, and conversely Section 365, supra, in its relation to Section 242, supra, must be regarded as a special statute. For this reason, Section 365, is an exception to the operation of Section 242 of Title 13. As a general rule, the enactment of a general law will not repeal a local or special law, unless the legislative intent to effect such repeal is clearly manifested. **City of Birmingham v. Southern Express Co.**, 164 Ala. 529, 51 So. 159; **Ivey v. Railway Fuel Co.**, 218 Ala. 407, 118 So. 583. However, in dealing with the question under consideration, it is not necessary to rely on such rule, for in the instant case Section 242, supra (the general law), was enacted on February 28, 1887 (General Acts of Alabama 1886-87, page 161), whereas Section 365, supra (the special law), was enacted on August 22, 1923 (General Acts of Alabama 1923, pages 200-201). If it should be conceived that there is a conflict between Section 242, supra, and Section 365, supra, the later Section would prevail, the rule of statutory construction being that where there is a conflict between two Sections of a Code adopted by the Legislature which were derived from Acts passed at dif-

ferent times, the Section derived from the Act last passed prevails over the Section derived from the Act first passed. *Ex parte Ray*, 45 Ala. 15; *O'Neal v. Robinson*, 45 Ala. 526; *Middleton v. General Water Works and Electric Corp.*, 25 Ala. App. 455, 149 So. 351, cert. den. 227 Ala. 219, 149 So. 352.

The Legislature, in formulating the 1940 Code of Alabama placed in said Code both the older general law (Title 13, Section 242), and the later special law (Title 62, Section 365) which clearly manifests an intent that Section 365 of Title 62 should be given a field of operation.

Although Section 365 of Title 62 does not expressly provide that solicitor's fees in the Tenth Judicial Circuit should be paid into the Solicitor's Fund in Jefferson County, the authority to the Solicitor of said Circuit to make expenditures from said fund necessarily implies that such fees must be paid into such fund in order that the legislative intent to authorize expenditures to be made therefrom may be carried into effect. *State, ex rel. Jefferson County v. Waldrop*, 202 Ala. 91, 79 So. 483.

In view of the above conclusions, it is my opinion that solicitor's fees collected from defendants who have been convicted in prosecutions in Jefferson County by the Solicitor of the Tenth Judicial Circuit should be paid into the Solicitor's Fund of Jefferson County. It is my further opinion that the Solicitor of the Tenth Judicial Circuit is authorized to make such expenditures from said Fund as are authorized under the provisions of Title 62, Section 365, Code of Alabama of 1940.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

June 12, 1945.

Hon. William A. Conrad,

Clerk, Circuit Court,

Mobile 15, Alabama.

Sheriffs—Clerks—Bail—Bonds—Qualifications of bail—Oath—Title 15, Sections 189, 372, 204, 201, Code of Alabama 1940. Sheriff or clerk may require principal of attorney-in-fact, surety, on bail or appeal bond to appear and qualify.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of May 7, 1945, is as follows:

"I respectfully request your Honor's official opinion on the following question, viz:

"In a case where a person has power of attorney from **two individuals** to sign bonds, which said power of attorney is recorded in the Probate Court, offers, requests or demands the right to sign a bond which is to be approved by either the Sheriff or the Clerk of the Circuit Court, has or not the Sheriff or said Clerk the legal right, power or authority to **decline** to accept a bond signed by said person holding said power of attorney, if the persons for whom said attorney-in-fact represent, decline or refuse to personally appear before said Sheriff or said Clerk when demanded by said Sheriff or said Clerk to answer under oath whether or not there are any outstanding mortgages or liens on their property, and as to whether or not they are worth double the amount of said bond?"

Additional information was presented to this office for the purpose of clarifying the above statement of facts. This information consisted of a copy of the powers of attorney referred to in the inquiry, an appearance or bail bond in the amount of five hundred dollars, and an appeal bond in the amount of one thousand dollars.

Assuming for the purpose of this inquiry that the two powers of attorney are sufficient to authorize the attorney-in-fact to sign the principal's name to both of the bonds in question, it is my opinion that either the sheriff or the clerk may require the principal of the attorney-in-fact to appear before him and answer under oath whether he has those qualifications set out in Title 15, Section 201, Code of Alabama 1940.

Title 15, Section 189, Code of Alabama 1940, requires the sheriff to accept the amount of bail endorsed upon the indictment and discharge the defendant. Title 15, Section 189, Code of Alabama 1940. Title 15, Section 372, Code of Alabama 1940 provides that the clerk of the court shall admit the defendant to bail on appeal. Title 15, Section 372, Code of Alabama 1940; 19 Quarterly Report of the Attorney General, 225. Therefore, it is the duty of the clerk and of the sheriff to admit the defendant to bail in the amount fixed by the court.

Title 15, Section 204 of the Code of 1940 provides

"Bail required to qualify when doubtful.—When there is a reasonable doubt as to the sufficiency of the bail, they may be required by the court, magistrate or officer to answer fully on oath as to their qualifications."

It is my opinion that the clerk and the sheriff are "officers" within the meaning of Section 204. It is clear therefore that the clerk or the sheriff may require the bail to appear before him and answer certain questions. The questions that the sheriff or the clerk may require to be answered are found in another code section, Section 201, Title 15, Code of Alabama 1940. This section provides as follows

"§201. Qualifications of bail.—The qualifications of bail are, that each must be a resident of this state, and a householder and freeholder therein, and that each must be worth, exclusive of property exempt from execution, the amount expressed in the undertaking; but the court, magistrate, or officer, in taking bail, may allow more than two persons to justify severally as bail in amounts less than that expressed in the undertaking, provided the whole be equivalent to two sufficient bails; or the court,

magistrate, or officer, in taking bail, in lieu of the foregoing, may allow a corporation, foreign or domestic, qualified to do a bonding business in this state, and authorized to execute the undertaking of bail, to execute such bail."

From the facts stated in your inquiry, it appears that the principals in the powers of attorney, and not the attorney-in-fact, are the bail in this particular case. The sheriff or the clerk may, therefore, under the statute require the bail to appear before him and qualify according to the provisions of Title 15, Section 201, above. See 8 C. J. S., page 128, Section 60.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

June 15, 1945.

Hon. J. C. Johnson, Commissioner,

Lawrence County,

Moulton, Alabama.

1. County Service Commissioner appointed pursuant to General Acts Alabama, Regular Session, 1943, page 587, not entitled to be paid for services performed prior to the time of filing his bond with proper officer.

2. County governing body authorized to pay premium on bond of County Service Commissioner appointed under General Acts of Alabama, Regular Session, 1943, page 587.

Opinion by Assistant Attorney General Savage.

Dear Sir:

Your request for an official opinion, bearing date of May 18, 1945, is as follows:

"I was selected by the committee, of the American Legion and appointed county service commissioner by the county board of revenue for Lawrence County last October. They asked me to go to work immediately, but I put them off until the first of November. So I could get my business arranged to do the work.

"I understood that a bond was required, and applied for one. It came in and was filed on Nov. 17, 1944. The secretary to the board of revenue contends that they cannot legally pay me for the first half of November, because the bond had not been filed. The bond stated that it was to be effective November 1, 1944. Please give me your opinion on this matter, also the Probate Judge said they would reimburse me for the cost of the bond, could he legally do that? There is some question about that also."

It appears clear to me, from a study of the Act of the Legislature authorizing county governing bodies to create the office of County Service Commis-

sioner (General Acts of Alabama, Regular Session, 1943, page 587), that a County Service Commissioner appointed pursuant to such act is a county officer. This being true, then the bond required of the County Service Commissioner is subject to and governed by the provisions of law governing, regulating, covering, and pertaining to official bonds of county officers contained in the Alabama Code of 1940, insofar as such provisions of the Code do not conflict with the provisions of said act of the Legislature pertaining to County Service Commissioners.

You state that you were appointed County Service Commissioner by the Board of Revenue in October 1944; that the Board of Revenue asked you to go to work immediately, but you put them off until the first of November, 1944; that your bond was filed November 17, 1944, but it was made effective as of November 1, 1944. You desire to be advised whether, under such facts, the Board of Revenue is authorized to pay you for the first half of November, and whether the Board of Revenue is authorized to reimburse you for the amount you paid as a premium on your bond.

Section 7 of such act of the Legislature specifies that the County Service Commissioner shall, **before entering upon the duties of his office**, subscribe to and execute an oath of office and a bond in the penal sum of \$5000.00 with sufficient surety to be approved as the bond of other County officials, conditioned on the faithful performance of his official duties. Your bond, therefore, should be in the amount of \$5000.00 as provided by this act and should be approved by the Board of Revenue and filed with the Probate Judge. Sections 80, 81, and 82 of Title 41, Code of Alabama 1940.

Section 45 of said Title 41 requires that official bonds must be filed in the proper office within forty days after the declaration of election, or after the appointment to office, except bonds of tax assessors and tax collectors, which shall be filed in or before the first day of September next after their election or appointment. Section 54 of said Title 41 makes it a violation of law for any public officer who is required to give bond to perform any official act before his bond is approved **and filed**, and subjects the officer to a penalty if he performs any official act before his bond is approved **and filed**.

Section 47 of said Title 41 provides that if any officer required by law to give bond fails to file the same within the time fixed by law, he vacates his office; and in such case, it is made the duty of the officer in whose office such bond is required to be filed at once to certify such failure to the appointing power, and the vacancy must be filled as in other cases.

You do not state the exact date you were appointed County Service Commissioner, but advise that it was in October, 1944, so I am not able to tell whether your bond was filed within the required time or not.

It is my opinion that in view of the provisions of law above referred to, the County Board of Revenue is not authorized to pay you for the time you acted as County Service Commissioner prior to the time your bond was actually filed.

Section 96 of said Title 41 provides that the premium on all bonds in excess of \$1,000.00, provided for in the Article containing said Section 96, when made by surety companies, shall be paid by the respective counties out of the

general funds of said county, except premiums on the bonds of the Superintendent of Education and of the Custodian of Public School Funds. Under this Section, I am of the opinion that the Board of Revenue is authorized and should pay the premium on your bond if it was made by a surety company, since the amount of your bond is required to be \$5000.00.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

June 15, 1945.

Hon. G. H. Howard,

Judge of Probate,

Elmore County,

Wetumpka, Alabama.

Domestic corporations—Permit fee—Title 51, Section 346; Title 2, Section 85, et seq. Code 1940.

Domestic corporation not having capital stock not required to pay permit fee under Title 51, Section 346.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of June 4, 1945, is as follows:

"In this county we have a Curb Market at Tallassee toward the construction of which the county appropriated \$1,050.00. The balance of the money was voluntarily contributed by citizens of the county. It is a non-profit organization and there was no capital stock paid in. The Probate Office gave its fees for recording of the papers there being no money for this expense. This corporation was organized under Section 85 Article 9 Subdivision 2 of Title 2, 1940 Code of Alabama. Please advise me whether or not the State Board of Revenue should collect yearly permit fee under Section 346 Title 51. You will notice this section seems to contemplate collection of a fee only when Capital Stock is paid in. You will also notice provision in Title 51 Section 346 that strictly benevolent, educational or religious corporations shall not be required to pay such permit fee. This organization is merely for accommodation for the farmers to have a convenient location for disposal of their products and there are no fees collected and no profits accrued or distributed to anyone. It should be stated, however, that there is a small fee collected for the expense of maintenance of the establishment."

The question is whether or not a Curb Market having no paid capital stock, and incorporated under the provisions of Title 2, Section 85, et seq., Code

of Alabama 1940, must pay to the State of Alabama a permit fee, or tax, pursuant to Title 51, Section 346, Code of Alabama 1940.

It is my opinion that the Curb Market incorporated as described in your inquiry, and having no capital stock, is not required to pay the permit fee required of domestic corporations under the provisions of Title 51, Section 346, Code of Alabama 1940.

Title 51, Section 346, Code of Alabama 1940, provides in part as follows:

"Every domestic corporation organized under *** the laws *** of Alabama, *** shall be required to procure from the department of revenue *** a permit ***. For all such permits said corporation shall, ***, pay to the department of revenue a fee of ten dollars ***, if the paid capital stock of said corporation is less than twenty-five thousand dollars; ***. Strictly benevolent, educational or religious corporations shall not be required to pay such permit fee."

It is stated as a matter of fact that the corporation referred to in your inquiry has no capital stock. Since the amount of the tax or permit fee is made dependent upon the amount of capital stock of the corporation, it must be necessarily implied that no permit fee or tax is required to be paid for a corporation having no capital stock.

The permit fee is required to be paid "if the paid capital stock of such corporation is less than twenty-five thousand dollars." It may be said that when there is no capital stock in the corporation at all, "the paid capital stock of said corporation is less than twenty-five thousand dollars," but it is my opinion that it is implied in the provisions of Title 51, Section 346, Code of Alabama 1940 that before a corporation becomes liable for the domestic corporation fee there must be some amount of paid capital stock. The permit required by Title 51, Section 346 may, therefore, be obtained without payment of a fee.

It is unnecessary, therefore, to discuss whether or not this corporation is strictly benevolent, educational or religious.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

June 15, 1945.

Hon. W. J. Nash, Jr., Judge,

Inferior Court of Blount County,

Oneonta, Alabama.

Justices of the Peace—Inferior Court Judges—Words and Phrases, Calendar Month, Title 13, Section 418, Cost and Fees, Fines and Forfeitures.

The deduction made by justices of the peace for fees in insolvency cases is to be made from collections of the month in which deduction is taken.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of June 9, 1945, is as follows:

"Title 13, Section 418 of the 1940 Code provided for the handling of the Fine and Forfeiture fund, as to collections as charges in Justice of the Peace Courts and Courts of like Jurisdiction, and provides among other things that semi-annual reports shall be made on the First Monday in January and July of each year, and that he may deduct the amount due him in cases where the defendant was acquitted, or insolvent and unable to pay after conviction a sum not to exceed fifty dollars for any calendar month, and that he shall pay the remainder at the time of making the semi-annual report to the Treasurer or Custodian of the County Funds.

"Suppose however, that on a certain month during the reporting period, say the month of March there were collected \$20.00 in fines and that the Judge was due the sum of \$40.00 as costs or fees in insolvent cases, and that no Constable fees were due in either of the months. As set out above, would it be legal for the Judge to claim his entire insolvents from the month of either February or April, provided there was money on hand in said fund to pay same, and provided the total in none of these months exceeded \$50.00, the legal allowance as provided in the Code as mentioned above?"

You are advised that the deduction for insolvency cases from fines collected during a particular month must be made from the collections of that particular month. Title 13, Section 418, Code of Alabama, provides in part as follows:

"To collect all fines imposed where the defendant is not sentenced to jail or hard labor to pay same; or an appeal is taken. He may deduct from fines and forfeitures collected by him, the amount due for his fees and those of the constable in cases in which the defendant was acquitted, or insolvent and unable to pay after conviction, a sum not to exceed fifty dollars for any calendar month; he shall pay the remainder of the fines

and forfeitures collected by him to the custodian of the county funds where there is no county treasurer, same to be paid semi-annually on the first Mondays in January and July of each year, and make his report at the next session of the grand jury; if he should fail to make such payments as herein provided, he shall forfeit all right to make any deduction from his collections for cost due him and the constable for fees as herein provided."

The Court of Appeals of Alabama has defined the term "calendar month" in the case of **Daniel v. Ormand**, 26 Ala. App. 441, as "the time from any day of any of the months as adjusted in the calendar to the corresponding day (if any; if not, to the last day) of the next month." See also 6 **Words and Phrases**, page 10. Further, Title 1, Section 2, Code of Alabama 1940 states that the word month means a calendar month.

These definitions, however, are not applicable to the question you ask. In the case of **Daniel v. Ormand**, supra, the court was construing the term "within six months from the rendition of judgment." Plainly this period of time could begin on any day of any month.

Section 418 above states that the Justice of the Peace (or Inferior Court Judge) may deduct from the fines the amount due for his fees in cases where the defendant was insolvent, "a sum not to exceed fifty dollars for any calendar month." The deduction not to exceed fifty dollars is to be made from the collections made during the month such deduction is taken. For example, if during the month of March you collect twenty dollars in fines and the judge was due the sum of forty dollars as costs or fees in insolvency cases, the deduction for fees in insolvency cases must come from the collections made during the month of March, and not from collections made during the months of February or April. **Quarterly Report of the Attorney General**, Vol. 17, pages 78, 82. It results, therefore, that the term "calendar month" as used in Section 418 of Title 13, Code 1940, means a definite period of time commencing on the first day of the month and ending on the twenty-eighth, twenty-ninth, thirtieth, or thirty-first day of the month. **Warfield Natural Gas Company v. Clark's Adm'x.**, 257 Ky. 724, 79 S. W. (2d) 21, 97 A. L. R. 971.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

June 18, 1945.

Hon. J. W. Kendrick, Secretary,

Commissioners Court of Coffee County,

Elba, Alabama.

Payments made to counties by Farm Security Administration pursuant to Sections 431, 432, and 433 of Title 40, U. S. C. A. are in lieu of ad valorem taxes and such funds or accounts of the county should be credited that would have been credited had the tax collector collected this money as ad valorem taxes due from owners of the property.

Opinion by Assistant Attorney General Savage.

Dear Sir:

Your request for an official opinion, bearing date of May 24, 1945, is as follows:

"The Farm Security Administration owns a good deal of land in Coffee County and they do not pay any taxes, but they do make us a grant in lieu of taxes.

"We would like to know if the money they make us a grant for is to be divided up in the County General Fund, Road and Bridge Fund and Educational Fund, or should it all be credited to the regular general fund of the county.

"We will thank you for your opinion in order that we may know how to make the correct entry on our books when this money does come in."

The name of the Resettlement Administration was changed to Farm Security Administration by order of the Secretary of Agriculture. (Memorandum No. 732, 6 C.F.R. 301.5. 6 C.F.R. Ch. III, Section 301.1, set seq.)

It is presumed that land has been acquired by the United States (Farm Security Administration) in Coffee County, Alabama for a resettlement project, or for a rural-rehabilitation project pursuant to Section 431 of Title 40, U. S. C. A. Section 432 of said Title 40 is as follows:

"Upon the request of any State or political subdivision thereof or any other local public taxing unit, in which any such project, described in section 431 of this title, has been or will be constructed, the Resettlement Administration is authorized to enter into an agreement, and to consent to the renewal or alteration thereof, with such State or political subdivision thereof, or other local taxing unit, for the payment by the United States of sums in lieu of taxes. Such sums shall be fixed in such agreement and shall be based upon the cost of the public or municipal services to be supplied for the benefit of such project or the persons residing on or occupying such premises, but taking into consideration the benefits to be derived by such State or subdivision or other taxing unit from such project."

Section 433 of said Title 40 is as follows:

"The receipts derived from the operation of such projects, described in section 431 of this title, in addition to the moneys appropriated or allocated for such projects, shall be available for such payments in lieu of taxes and for any other expenditures for operation and maintenance (including insurance) of such projects. To provide for such payments and expenditures, the Resettlement Administration is authorized from time to time to retain out of such receipts such sums as it may estimate to be necessary for such purposes."

It is apparent, from the above provisions of law, that the payments made to Coffee County are in lieu of ad valorem taxes, and are made to indemnify against loss of revenue arising from acquisition by the Farm Security Administration of property previously subject to taxation. I am, therefore, of the opinion that the payments received from the Farm Security Administration should be treated as if collected by the county tax collector. In other words, such payments should be applied just as though they were money collected by the tax collector in payment of ad valorem taxes and such funds or accounts of the county should be credited as would have been credited had the tax collector collected this money himself due from tax payers.

On September 2, 1941, this office rendered an opinion to Hon. T. F. Snead, Chairman of the Cherokee County Board of Revenue (Quarterly Report of Attorney General, Vol. 24, page 191) which involved the application of money received from the Tennessee Valley authority in lieu of taxes, and as such opinion discusses the matter in detail and is applicable in part at least to the questions you propound, I am enclosing a copy of the same for your information.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

June 18, 1945.

Hon. J. A. Johnson,
Judge of Probate,
DeKalb County,
Fort Payne, Alabama.

The issuance of a taxi license to operate in intrastate service is within the exclusive authority of the State as a matter of State sovereignty.

Opinion by Assistant Attorney General Gallion.

Dear Sir:

Your request for an official opinion, bearing date of June 8, 1945, is as follows:

"I would like to know what to do about the following matter, and will appreciate an opinion, as to what I can do.

"One Robert A. Blansit, who has a driving license and operates a truck part time; he is partly crippled, but a good driver of automobiles. He has applied for a Certificate or permit with the ODT. Board for a permit to buy a Taxi tag, they have refused him a permit. He has applied to this office for a Taxi tag, now can I sell him a Taxi tag under this situation, or must I refuse to sell him the tag, and what authority have I to act either way.

"Wish you would clear this situation up for me so I will know what to do in this matter."

Before answering your inquiry, a brief resume is first made of the inception of the Office of Defense Transportation and regulations issued by such agency relating to your inquiry.

Upon the entry of the United States in World War II, the President of the United States was given those powers, commonly referred to as the "President's War Time Powers" as provided for in the Federal Constitution. Acting under this authority, the President established the Office of Defense Transportation in the Office for Emergency Management by Executive Order No. 8989 on December 18, 1941. United States Code, Congressional Service 1944, page 2031.

The Office of Defense Transportation, deriving its authority from such presidential source, on July 1, 1943, promulgated General Order No. 20A, of which the pertinent parts relating to your proposition are summarized as follows:

"Part 501—Conservation of Motor Equipment.

"Sub-part L—Taxicabs and taxi service.

"Pursuant to Executive Orders 8989, 9156, 9214 and 9294, and in order to conserve and providently utilize federal transportation services, facilities and equipment; and to provide for the prompt and continuous movement of necessary traffic, the attainment of which purposes is essential to the successful prosecution of the War *** it is hereby ordered:

"Section 501.76—(Summarized) This order restricts the business of furnishing taxi service in any municipality or other governmental subdivision to those persons who were engaged in the taxicab business in such municipality, or other governmental subdivision on September 1, 1942, and to persons who have purchased or succeeded to the business of a person so engaged. It also limits the number of taxicabs that will be operated in any municipality or other governmental subdivision by any person in the taxicab business to the number of taxicabs he or his predecessor in interest operated therein on September 1, 1942.

Section 501.79 of the Order imposes certain restrictions upon the operation, driving and use of taxicabs *** as are necessary if equipment for the transportation of essential and necessary passenger traffic is to be available ***

"Section 501.83 provides for the issuance of special and general permits to meet specific needs or exceptional circumstances, or to prevent undue public hardship. .

"Section 501.85 provides for certain exemptions from the Order—(b) The use of taxicabs for the delivery of telegraphic, cable and radio communications in emergencies *** . (c) The operation of a taxicab for the purpose of transporting mail at the request of the Postoffice Department of the United States.

"Section 501.88—Applicability—The provisions of this Order shall be applicable within the continental United States and the territories and possessions of the United States except Puerto Rico and the Virgin Islands."

As you state, the party desirous of obtaining a permit to operate a taxicab was refused such permit by the local Office of Defense Transportation Board. Evidently their decision was based on the above regulations, and the applicant was not deemed to warrant a permit under said regulations.

The issuance of a license tag as well as the issuance of an operator's license for intrastate taxicab operation (as I presume is here the case), is obviously solely within the authority of the State as a matter of State sovereignty. *Gibson v. State*, 214 Ala. 38. It was apparently not a matter of the Office of Defense Transportation Board refusing the proposed taxicab operator a "taxi tag" as such, but the refusal by them to permit to engage in the taxicab business with the sanction of the Federal Government, which permit carried with it the ensuing attendant rights of increased gasoline allotment, etc.

Under a similar derivation of presidential authority, the Office of Price Administration and Civilian Supply was created in the Office for Emergency Management April 11, 1941, by Executive Order No. 8734. U. S. Code, congressional Service 1940, page 2032.

One of the functions of this agency is the control of civilian rationing of gasoline, tires, etc., as evidenced by clause 2(a-4) of the Executive Order quoted, supra, which is in part as follows: " *** After the satisfaction of military defense needs, to provide through the determination of policies and the formulation of principles and programs, for the equitable distribution of the residual supply of such materials and commodities among competing civilian demands
*** "

The Office of Defense Transportation and the Office of Price Administration and Civilian Supply naturally seek to coincide their activities to the accomplishment of one end. Therefore, the lack of a permit from the Office of Defense Transportation would prohibit a proposed taxicab operator from obtaining a sufficient gasoline allotment from the Office of Price Administration and Civilian Supply to conduct his business even though issued a license by the State.

I find no mandatory or prohibitive legislation by the State along the lines of the proposition before us. In the absence of such, it is my opinion that as a matter of intrastate scope, the State sovereignty still prevails and you, as

probate judge, having the right to issue said license tag under such authority as you now possess. However, it is unquestionably the public policy of this State to cooperate with the agencies of the Federal Government in the prosecution of the War effort. Where the Office of Defense Transportation, as in the instant case, has refused a permit, it is my opinion that the judge of probate or issuing authority should properly apprise the applicant of the situation confronting him; should point out that in event of a violation of Federal regulations, such applicant would be subject to the Federal penalties imposed; and in general seek to discourage such applicant before issuing him a license. This would follow, in my opinion, as a function of the issuing office in the furtherance of the public policy of this State to particularly cooperate with Federal agencies in a time of War to the fullest extent possible.

In the instant case, while the refusal of a permit by the Office of Defense Transportation does not affect the right of the State to issue a taxi license or your authority therein, the ensuing Federal restrictions on an applicant if license were issued would be so severe as to defeat the applicant's purpose from all practical standpoints, and it is my advice to properly inform said applicant of this fact and to outline his position as above shown.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

June 19, 1945.

Hon. G. H. Howard,

Judge of Probate,

Elmore County,

Wetumpka, Alabama.

Code 1940, Title 12, § 12(17)—County Extension Service.

County governing body may appropriate money "toward the purchase of a motion picture machine to be used solely by the County Extension Service agents in projecting visual education on farm subjects at farm meetings in rural community centers."

Opinion by Assistant Attorney General Matthews.

Dear Sir:

Your request for an official opinion, bearing date of June 11, 1945, is as follows:

"Elmore County Commissioners' Court has been requested by the Elmore County Farm Bureau to make an appropriation toward the purchase of a motion picture machine to be used solely by the county Extension Service agents in projecting visual education on farm subjects at farm meetings in rural community centers in Elmore County.

"Please advise if this can be legally done."

One of the functions of the Alabama Extension Service is "to aid in diffusing among the people of Alabama in the several counties useful and practical information on subjects relating to agriculture and home economics." Code 1940, Title 2, § 650.

Counties are authorized, among other things, "Where the State or federal authorities have taken up the works (sic) of farm demonstration, or the organization of farm life clubs for the promotion of agriculture, to appropriate for aiding in such work such sum or sums as the county commissioners or board of revenue may deem adequate and necessary." Code 1940, Title 12, § 12(17).

This statutory authority has been construed by this office to authorize appropriations to pay for stenographic services for a farm demonstration agent. Biennial Report, Attorney General, 1930-32, page 973.

The same principle in my opinion applies to an appropriation in aid of "purchase of a motion picture machine to be used solely by the County Extension agents in projecting visual education on farm subjects at farm meetings in rural community centers." The use of such machines for such purposes would seem to be an appropriate means "to aid in diffusing *** useful and practical information on subjects relating to agriculture and home economics"—which is recognized as a governmental function (Title 2 § 650, *supra*)—and to operate to promote agriculture, a county purpose as indicated by Title 12, § 12(17) *supra*.

Such appropriations, however, must be made, if at all, to the county extension service, and not to the County Farm Bureau. Constitution 1901, § 94. Otherwise the appropriation would be subject to attack as violative of said Section 94.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

June 21, 1945.

Hon. O. L. Andrews,

Clerk, Circuit Court,

Jefferson County,

Birmingham, Alabama.

Title 11, Section 21, Code of Alabama 1940—Fees allowed to clerks of circuit courts.

Title 7, Section 199, Code of Alabama 1940—Service on nonresident operator or owners of motor vehicles.

1. Under Title 11, Section 21, Code of Alabama 1940, the clerk of circuit court is entitled to a fee for the summons and complaint issued by him and is also entitled to a fee for each copy of same.

2. Under Title 7, Section 199, Code of Alabama 1940, where a fee of \$3.00 to be paid the Secretary of State is provided for in obtaining service on a nonresident defendant, such fee is a charge for the perfection of service.

Opinion by Assistant Attorney General Gallion.

Dear Sir:

Your request for an official opinion, bearing date of June 16, 1945, is as follows:

"Will you please give us your official opinion as to whether or not the opinion rendered us on November 4, 1938, 'Biennial Report Attorney General Alabama'—1938-39—Page 68, is to be followed in the case of a damage suit against a non-resident defendant:—Title 7, Sec. 199—Page 165, 1940 Code of Alabama. This section states that service of such process shall be made by leaving three copies of the summons and complaint, and a fee of three dollars, with the Secretary of State of the State of Alabama.

"We would appreciate an early reply as we are holding up making cost bill in a case of this nature."

My answer to your question is in the affirmative.

Title 7, Section 199, Code of Alabama 1940, in providing for service on a nonresident operator of a motor vehicle who has had an accident within this State, is as follows: " *** Service of such process shall be made by leaving three copies of the summons and complaint, with a fee of three dollars, with the Secretary of State of the State of Alabama, and such service shall be sufficient service upon such non resident defendant *** "

Title 11, Section 21, Code of Alabama 1940, fixes the fees and compensation of clerks of circuit courts, among other things, as follows:

"Issuing summons and complaint	\$ 1.25
"Making every copy thereof	.30
"Making every copy thereof over two hundred words, for each hundred words	.15"

In Quarterly Reports of the Attorney General, Volume 13, page 68, this office held: " *** The clerk is entitled to pay for each summons and complaint issued by him and is also entitled to pay for each copy of same *** "

In Quarterly Reports of the Attorney General, Volume 2, page 203, it was held that the payment of the \$3.00 fee to the Secretary of State as quoted, supra, was for the perfection of service on a nonresident defendant.

It is my opinion that where the Code prescribes the filing of three copies of summons and complaints, and when they are issued out of your office, you are entitled to include charges therefor in your cost bill. This is in line with the former holding of this office, quoted above. The fee of \$3.00 paid to the Secretary of State is a fee for the perfection of service as a separate and distinct charge, and your charges for copies of the summons and complaints issued out of your office are proper items to be included in your cost bill.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

June 22, 1945.

Hon. H. G. Dowling, Commissioner,
Department of Revenue,
Montgomery 2, Alabama.

Corporations—Taxation—Department of Revenue—Title 51, Sections 339, 340, and 341, Code of Alabama of 1940.

When a foreign corporation increases the capital employed by it in this State either during the calendar year that it was admitted to do business in the State or some subsequent year, it must report such increase and pay a qualifying fee or admission tax on such additional capital employed.

Opinion by Assistant Attorney General Arbutnot.

Dear Sir:

Your request for an official opinion, bearing date of June 5, 1945, is as follows:

"Section 339, Title 51, Code of Alabama 1940, provides for the payment of a qualification fee or admission tax by foreign corporations before they are authorized to engage in business within the state. This qualifi-

cation fee or admission tax is levied on a sliding scale, depending upon the amount of capital employed or to be employed within the State.

"One of the provisions of the statute reads as follows, I quote:

"'Provided that if, after qualification, a corporation shall employ an amount greater than that on which admission fees have been paid, it shall immediately report and pay on such additional amount.'

"The succeeding section, which deals with statements to be made to the Department of Revenue, contains the following expression, I quote:

"'If such corporation is not at the date of filing of such statement, engaged in business in the State, the statement which states the actual amount of capital to be employed by such corporation in this state during the calendar year.'

"The following section No. 341, same title, provides in part as follows, I quote:

"'Payment of admission fee but once—the tax required by the second preceding section shall be paid but once.'

"The Statute is silent on the question of supplemental reports for additional capital used in subsequent years by foreign corporations; it is also silent as to the schedule upon which taxes shall be paid upon additional capital employed within the state.

"The purpose for which the foreign corporation is required to pay a qualification fee or admission tax is to enable the corporation to qualify to do business within the State of Alabama. In administering the provisions of these statutes by the State Department of Revenue, the following questions arise:

"(1) May the word 'qualification' be construed to be devisable to the extent that a foreign corporation employing additional capital in the years subsequent to the year of its qualification be required to pay an additional tax on the new capital so employed?

"(2) If a foreign corporation qualifies to do business within the state and pays the qualification fee or admission tax due for the first calendar year, can it be required by the State Department of Revenue to pay an additional qualification fee or admission tax on the supplemental capital employed?

"If your answer to the immediate preceding paragraph is in the affirmative, upon what provision of the scale should the additional tax be computed?

"The Supreme Court of Alabama has considered the identified sections of the statute, but it was not necessary to construe the statutes in deciding the legal issue presented to the court. I refer to the decision of

the Supreme Court in the *International Paper Company* case, 9 So. (2d), page 8.

"The State Department of Revenue will appreciate it if you will kindly furnish to it a legal opinion construing the identified statutes in the manner suggested.

"Please accept our thanks for giving this matter your usual prompt attention."

It is my opinion that the first two questions presented by your request should be answered in the affirmative.

Title 51, Section 339, Code of 1940, which is referred to in your request, specifically provides that if a corporation, after it qualifies to do business in this State, shall employ an amount of capital in this State greater than that on which the admission fees have been paid, it shall immediately report and pay on such additional amount of capital employed. This proviso has application to additional capital employed during the calendar year in which the corporation is admitted to do business in the State and also to additional capital employed in years subsequent to the calendar year in which the corporation was admitted to do business in the State.

In the case of *International Paper Co. v. Curry*, 9 So. 2d. 8, it was held: (1) That a foreign corporation qualifying to do business in Alabama is liable for an entrance fee regardless of whether it has any capital employed in Alabama at the time of its entrance, provided it employs capital in Alabama at any time during the calendar year. (2) That under the Constitution no franchise tax can be imposed upon a foreign corporation unless capital is employed by the corporation in the State at the time the liability for franchise tax accrues.

The statutes involved in this opinion (Title 51, Sections 339, 340, and 341, Code of 1940) were not involved in the *International Paper Company* case, and the Court discussed these statutes only to show the distinction between the entrance fee on foreign corporations and the franchise tax on such corporations. On this point, the Court said: "The entrance fee is a legislative levy. The franchise tax is a constitutional levy. Both are levied on different bases."

Title 51, Section 341, Code of 1940, which provides that the qualifying fee or admission tax on foreign corporations shall be paid but once means that a foreign corporation shall not be required to pay said tax on any amount of capital employed by it in this State but one time.

For instance, if a foreign corporation, at the time of its qualification, has \$1,000.00 capital employed or to be employed in the State and pays the qualifying fee or admission tax due on said amount, and at a subsequent date increases the amount of capital employed to \$2,000.00, such corporation shall report the amount of such increase as provided in Section 339, *supra*, and the amount of tax on such increase shall be computed on the basis of \$2,000.00 capital employed in the State and credit shall be taken for the amount paid

on the capital of \$1,000.00 employed in the State on which the qualifying fee or admission tax was paid at the time the corporation qualified to do business in the State.

For a concrete example, if a foreign corporation, at the time it qualifies to do business in the State, has employed or to be employed in the State capital in the amount of \$1,000.00 under the provisions of Section 339, supra, the amount of qualifying fee or admission tax due by such corporation would be \$70.00. If at a subsequent time the corporation increased the amount of capital employed in the State to \$2,000.00, such increase should be reported as required by Section 339, supra, and the tax should be computed on the basis of \$2,000.00 capital employed in the State, which would be \$71.00. Credit should then be taken for the \$70.00 paid on the basis of \$1,000.00 capital employed or to be employed in the State at the time the corporation qualified to do business, leaving a balance due of \$1.00.

In view of the answer to your first and second inquiries, it is not necessary to answer your third inquiry in reference to the scale which should be used in computing the additional tax.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

June 25, 1945.

Hon. C. B. Gullatt, Jr.,

Judge of Probate,

Russell County,

Phenix City, Alabama.

Marriage Certificate—Counties—Probate Judges—Records—Copies.
Title 34, Sections 9, 11, 12 and 14; Title 22, Section 92; Title 13, Section 280(7), Code of Alabama 1940.

Marriage certificate blank form used to certify record of Probate
Judge not furnished by County.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of June 8, 1945, is as follows:

"About three years ago while my office was being audited by State Examiners, whose names I have forgotten, they raised the question as to whether or not the County should pay for blank marriage certificates which were used by the Probate office. I insisted that the County should pay but they said that under some ruling I had to pay for them as the

County did not receive anything from these certificates, as the amount involved was not much I have been paying for them since. Now, however, we are using a large number of certificates, a great many of them being issued free, and I believe that the County should pay for these certificates and should have been paying all the time.

"Will you please advise me as to whether or not Russell County should pay for blank marriage certificates used in the Probate office?"

"If your answer to the foregoing question is Yes, am I entitled to a refund by Russell County of money paid by me for marriage certificates?"

I find no provision of law authorizing or requiring the County to pay for the blank marriage certificates to which you refer.

The license required to be obtained before a marriage is performed is procured from the Probate Judge, and when the minister or person performing the ceremony certifies to that fact upon the license his return is called a certificate of marriage. See Title 34, Sections 9, 11, 12, and 14, Code of Alabama 1940. The license form and the certificate are supplied by the Bureau of Vital Statistics. Title 22, Section 92, Code of Alabama 1940.

The Judge of Probate after recording the license and the certificate of marriage in a book kept in his office (Title 34, Section 12) sends the original marriage certificate and license to the Bureau of Vital Statistics (Title 22, Section 92). This Bureau is authorized to issue a certified copy of any marriage license or marriage certificate to any applicant entitled to such certificate. (Title 22, Section 92.)

The Judge of Probate who does not have the original marriage license and marriage certificate is not required to give a certified copy of the marriage certificate to an applicant, but may nevertheless furnish an applicant with a certified copy of his record. Biennial Report of Attorney General, 1936-1938, page 167. The blank form referred to in this inquiry appears to be a form certifying to the contents of the record or book kept for the registry of licenses and certificates of the Judge of Probate.

This blank form certifies that the record of the Probate Judge required to be kept by Title 34, Section 12, Code 1940 shows that certain persons have on record in the office of the Judge of Probate a marriage license and certificate.

The fact that the Judge of Probate must forward the original marriage license and certificate to the Bureau of Vital Statistics does not relieve him from keeping the records of licenses and certificates required by Title 34, Sections 11 and 12, Code 1940, Biennial Report of Attorney General, 1936-1938, page 167, and he must give a transcript of his record to any person tendering the proper fees. Title 13, Section 280(7), Code of Alabama 1940.

If the Judge of Probate chooses to use printed blank forms for this purpose I find no authority for the county to pay for such forms.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

June 25, 1945.

Hon. William H. Blanton, Judge,

Inferior Court of Huntsville,

Madison County,

Huntsville, Alabama.

Inferior Court of Precinct One, Madison County (Huntsville).
Inferior Courts—Unclaimed Witness Fees—Title 11, Section 7, Code of
Alabama 1940—Local Acts 1911, pages 215, et seq.

Disposition of unclaimed witness fees. Court may issue execution
against plaintiff for his costs upon return of execution against de-
fendant "no property found."

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of May 30, 1945, is as
follows:

"IN RE: (Disposition of unclaimed witness fees in the Inferior
(Court of Huntsville.

(Duty of Clerk of above named Court as to the issuance
(of executions against plaintiff for cost, where judgment
(has been rendered against defendant, execution issued
(and return made of 'no property found'.

"Your opinion is respectfully requested to clarify the following mat-
ters relating to the functioning of the Inferior Court of Huntsville, a
Court created by Local Acts of the Legislature, approved April 4th, 1911,
(in lieu of all Justice of the Peace Courts of Precinct One, Madison Coun-
ty, Alabama) Local Acts 1911, page 215:

"Please refer to the above act and advise me as to what disposition to
make of unclaimed witness fees, collected, and as to how long they should
be held by the Clerk of said Court before being remitted to the County.

"Opinions of the Attorney General, dated Sept. 13, 1943, Vol. 32 Page
131, make it clear as to what disposition to make of witness fees in the
County Courts and Courts of Record. However the Inferior Court of
Huntsville, is not a Court of Record.

"In addition thereto information is desired as to what disposition
should be made of witness fees (unclaimed) in Justice of the Peace Courts.

"Other controversial matters that I deem it necessary to call upon
you for your opinion to clarify are the following:

"Title 11, Sec. 7, (Code of Alabama, 1940,) provides that the Clerk of the Circuit Court, Probate Judge and Justices of the Peace may issue executions against the Plaintiff for his costs, in cases where judgment or judgments had been obtained by plaintiff or plaintiffs executions issued against defendant or defendants for costs and return or returns had been made showing 'no property found' in possession of defendant or defendants upon which to levy.

"Please enlighten me on the following matters:

"(1) Would the Inferior Court of Huntsville come within the purview of the above Section?

"(2) How long after an execution, that had been issued against a defendant, and was returned 'no property found' for judgment and cost, before the Clerk should issue an execution against the plaintiff for his cost? (Said cost being the property of Madison County, Alabama, the Judge and Clerk of the Court being on a salary basis and paid by the County.)

"(3) What penalty, if any, would the Clerk be subject to for the failure to issue an execution against the plaintiff within the time as outlined in your answer to questions One (1) and Two (2) above?

"Your opinion covering the above matters will be greatly appreciated."

The Act establishing the Inferior Court for Precinct One in Madison County (Huntsville) has been amended many times. Sections 2 and 12 of the Local Act provide as follows:

"Section 2. Said court and the judge thereof shall have and exercise all the jurisdiction, power and authority, and shall perform all the duties that are now or may hereafter be conferred by law on justices of the peace in civil and criminal cases, and such preliminary jurisdiction as is now or may hereafter be conferred by law on justices of the peace." (Local Acts 1911, page 216, approved April 4, 1911.)

"Section 12. The fees and costs of said court shall be the same as are now allowed by law to justices court of this State and shall be collected by the clerk of said court. All of the costs and fees so collected by him shall be paid into the treasury of Madison County once in every month." (Local Acts 1911, page 218, approved April 4, 1911.)

Your questions are:

(1) When witness fees are collected by the Inferior Court of Huntsville what disposition should be made of said fees, if they are unclaimed?

It is my opinion that witness fees which have been collected should be paid into the Treasury of Madison County once in every month according to the provisions of Section 12 of the Local Act quoted above. As you will note, Section 12 provides that "all of the costs and fees so collected by him shall be paid into the treasury of Madison County once in every month."

(2) What is the disposition of unclaimed witness fees in Justice of the Peace courts?

This question is not answered because it does not appear that this question has any relation to your Court.

(3) Does the Inferior Court of Huntsville come within the terms of Title 11, Section 7, Code of Alabama 1940?

Title 11, Section 7, Code 1940 provides that justices of the peace may issue executions against the plaintiff for costs created by the plaintiff "upon the return of an execution 'no property' against the defendant by the proper officer of the county in which a judgment was rendered." It is my opinion that this section is applicable to the Inferior Court of Huntsville. This section authorizes justices of the peace to issue executions, and the Judge of the Inferior Court of Huntsville has the powers of a justice of the peace. Section 2, Local Act, *supra*. In *Sanders v. Young*, 220 Ala. 94, 124 So. 225, it was stated that, "the provisions of this Local Act shall be construed with the provision of general law that have application."

(4) How much time after an execution against the defendant has been returned "no property found" must elapse before the Court can issue an execution against the plaintiff for his costs?

Title 11, Section 7, Code 1940 states that, "Justices of the peace *** upon return of an execution 'No property' against the defendant *** may issue execution against the plaintiff ***." In my opinion **upon** means forthwith or immediately. Therefore, no time need elapse. The Court may issue an execution against the plaintiff for his costs as soon as the return is made.

(5) What penalty, if any, would the Clerk be subject to for the failure to issue an execution against the plaintiff within the time as outlined above?

Since it does not appear that the Clerk or Court has refused or intends to refuse to issue an execution against a plaintiff, question (5) appears to be hypothetical, and should not be answered.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

June 28, 1945.

Hon. N. L. "Buck" Roberts,

Tax Assessor,

Chilton County,

Clanton, Alabama.

Title 51, Section 37, Code of Alabama 1940—Commencement and completion of assessment; supplemental assessment.

Title 51, Section 57, Code of Alabama 1940—Assessor to certify correctness of returns; notify department of revenue and delivery to board of equalization.

Tax assessor controlled by the method and the time of making assessments prescribed by the Code and has no authority to act otherwise.

Opinion by Assistant Attorney General Gallion.

Dear Sir:

Your request for an official opinion, bearing date of June 20, 1945, is as follows:

"Yesterday, June 19, 1945, certain lands were sold by the Tax Collector of Chilton County for their taxes.

"One purchaser at the sale came in my office and wanted to assess the property that he purchased. This property had already been assessed for the year 1945 either by the owner or from information.

"Can the Tax Assessor legally refuse to accept the assessment offered by yesterday's purchaser?"

Your question is answered in the affirmative.

Title 51, Section 37, Code of Alabama 1940, is as follows: "The return and listing of property, for taxation by the tax assessor must commence on the first day of October in every year, and shall be finished by him on the first day of January following; but the assessor may be allowed through the third Monday in January in each year to make a supplemental return or list of property which he may have failed to have returned or listed prior to the first day of January, and such supplemental return must be entered as any other return and shall be embraced in the abstracts made for the department of finance and tax collector and department of revenue."

Thus by this Section of the Code the tax assessor commences assessing on October 1 and is to finish on January 1. He has until the third Monday in January to complete his supplemental listing of those listings previously missed.

Title 51, Section 57, Code of Alabama 1940, reads as follows: "When the assessor shall have completed his work of assessing, valuing and equalizing property, which has been listed for taxation in his county and such valuation shall have been entered on the assessment list, which shall not be later than the last Monday in February of each year, he shall certify over his signature to the correctness of his returns, showing valuations fixed by him, and he shall at once notify the department of revenue by registered mail, that he has completed his assessment, valuation, and equalization work and that the tax returns are ready for the review and inspection as provided for in this title. Such lists of property shall be by the assessor delivered to the board of equalization not later than the second Monday in March."

By the wording of this Section of the Code then, it appears that the tax assessor has completed this phase of his assessment work for the tax year when he has carried out the provisions of the foregoing Code Sections, supra, said assessments then being subject only to review and inspection.

Further, if there is any protest of an assessment made an appeal should be taken by the party protesting in the manner and time provided for in Title 51, Section 72, Code of Alabama 1940, which is as follows: "From any final assessment of valuation of property for taxation made by any officer, board or commission, when no other specific mode of appeal to or review by the circuit court of such assessment or valuation is provided, the taxpayer may appeal to the circuit court of the county in which such assessment or valuation is made. Such appeal shall be taken within fifteen days from the time such assessment or valuation is entered upon the tax book or tax rolls. On such appeal the property shall be revalued for assessment by the court unless a jury is demanded by the taxpayer at the time of taking the appeal."

The purpose of property being sold at a tax sale is to relieve the indebtedness of taxes due. When said taxes are not paid when due a statutory lien then arises against the property. Our Supreme Court on this this point has commented as follows:

"The statutory lien *** (occurs) after all statutory requirements of due assessment and adjudication thereof, actually or theoretically, by the reviewing boards have been had, done, or time for review has expired by the operation of law and the county tax has been made. **Then does the lien become fixed and final.**" (Emphasis supplied.) In re: Opinions of the Justices, 234 Ala. 358.

When, therefore, property is sold at a tax sale it is for the purpose of clearing delinquent taxes for which a lien has arisen, said lien being fixed and final.

The amount of the delinquent tax assessment fixes the amount of the ensuing lien which in turn is the basis of tax sale and it follows, in my opinion, that a purchaser at a tax sale would also be estopped from subsequently raising in issue the amount of the lien and assessment relating thereto, which were the basis of sale.

It is true that this office, in Quarterly Reports of the Attorney General, Volume 22, page 44, held that the tax assessor must assess property to any person who returns the same for assessment and demand that the same be issued to him regardless of the fact that such property may have been pre-

viously returned by or assessed to, another. On this point the case of *State, ex rel. Matson v. Laurendine*, 199 Ala. 312, was cited, which case also held that a county tax assessor, being a ministerial officer without the right to determine title to property, must assess property listed by one in possession claiming ownership. The doctrines referred to above, however, do not raise the question of the prescribed time for making assessments and in my opinion this is the determining factor in the instant case.

The prescribed time and method of making assessments is clearly outlined in our Code Sections quoted supra, and the authority of the tax assessor is controlled thereby. In view of this fact, it is my opinion that a contrary listing of assessments is without the authority of the tax assessor and where a purchaser at a tax sale on June 19 then immediately seeks to assess property, said property already having been assessed for the tax year, he is precluded from doing so for the current tax year from the standpoint of time prescribed for such, and being premature in making assessment for the forthcoming tax year, the tax assessor can legally refuse to accept the assessment as being a matter in which he has no authority to act.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

June 29, 1945.

Hon. Chas. A. Baumhauer, Mayor,

City of Mobile,

Mobile County,

Mobile, Alabama.

Municipalities—Chamber of Commerce.

Not authorized to pay dues to Chamber of Commerce. Constitution of 1901, Section 94.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of June 7, 1945, is as follows:

"Pursuant to your letter of May 28th, I respectfully request that you extend the opinion rendered to the City of Mobile on the question of whether the City could make a donation to the Mobile Chamber of Commerce or pay membership fees.

"The opinion clearly states that the City is not authorized to make a donation and does not give us an answer as to whether we can take out a membership, since we did not give the amount of the dues or member-

ship fees to be paid to the Mobile Chamber of Commerce, what obligations the City would incur and for what purpose the dues are to be used.

"The membership fees would be comparable to that paid by several large business houses and corporations and would not exceed \$750.00 per year. The City incurs no obligations whatsoever by taking out a membership. The money paid by the City of Mobile to the Mobile Chamber of Commerce is to be used by the Chamber in its general program of supporting trade expansion, industrial development, extension of present industries, solicitation of tourist traffic and conventions and other civic activities.

"I would thank you very much if you would please advise me whether the City could take out a membership under the terms and conditions as outlined above."

It is my opinion that the City of Mobile is not authorized to pay dues to the Mobile Chamber of Commerce. A municipal corporation possesses, and can exercise, only those powers granted in express words, those necessarily or fairly implied or incidental to the powers expressly granted, and those essential to the declared objects and purposes of the corporation. **Gambill v. Erdrich Bros.**, 143 Ala. 506, 39 So. 297; **Cleveland School Furniture Company v. Greenville**, 146 Ala. 559, 41 So. 862; **1 Dillon on Municipal Corporations**, Section 89; **Colvin v. Ward**, 189 Ala. 198, 66 So. 98.

I do not find any provisions of law authorizing the City of Mobile to appropriate public money raised by taxation to the Chamber of Commerce for the purpose of paying membership fees; neither do I find that such power of appropriation may be implied as an incident to any power expressly granted to the City of Mobile. Further, it does not appear that the payment of such dues are essential to the objects and purposes of the municipal corporation of Mobile.

It is further my opinion that besides having no express or implied authority to make such appropriation to the Chamber of Commerce, the City is prohibited by Section 94 of the Constitution from lending its credit, or granting public money or anything of value in aid of, or to any individual, association or corporation whatsoever. While it is true that Chambers of Commerce perform most valuable services to the community and are engaged in projects that benefit the city and State, these desirable activities do not increase the power of the City, or remove constitutional inhibitions.

It is my opinion, therefore, that the payment of dues or membership fees to the Chamber of Commerce would violate Section 94 of the Constitution of 1901. See **Stone v. State**, 223 Ala. 426, 136 So. 727.

It should also be pointed out that if the membership fees or dues were paid by the City of Mobile out of public money to the Mobile Chamber of Commerce there is no method for determining whether or not the Chamber of Commerce expends such funds for public purposes. There is no provision of law authorizing the City of Mobile to audit the books of the Mobile Chamber of Commerce. **Quarterly Report of Attorney General**, Vol. 35, page 84.

Although the Chamber of Commerce may be engaged mainly in those activities enumerated in your inquiry, it is possible and probable that it is engaged in other projects not of a public nature, for which its funds, which would include municipal funds, are expended.

Yours very truly,

WILLIAM N. McQUEEN,

Acting Attorney General.

Quarterly Report, Attorney General

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